Canada's Residential Schools:

The Legacy

The Final Report of the Truth and Reconciliation Commission of Canada

Volume 5

Truth and
Reconciliation
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Canada's Residential Schools

Volume 5

Introduction

The closing of residential schools did not bring their story to an end. The legacy of the schools continues to this day. It is reflected in the significant educational, income, and health disparities between Aboriginal people and other Canadians—disparities that condemn many Aboriginal people to shorter, poorer, and more troubled lives. The legacy is also reflected in the intense racism some people harbour against Aboriginal people and the systemic and other forms of discrimination Aboriginal people regularly experience in Canada. Over a century of cultural genocide has left most Aboriginal languages on the verge of extinction. The disproportionate apprehension of Aboriginal children by child-welfare agencies and the disproportionate imprisonment and victimization of Aboriginal people are all part of the legacy of the way that Aboriginal children were treated in residential schools.

Many students were permanently damaged by residential schools. Separated from their parents, they grew up knowing neither respect nor affection. A school system that mocked and suppressed their families' cultures and traditions destroyed their sense of self-worth. Poorly trained teachers working with an irrelevant curriculum left students feeling branded as failures. Children who had been bullied and abused carried a burden of shame and anger for the rest of their lives. Overwhelmed by this legacy, many succumbed to despair and depression. Countless lives were lost to alcohol and drugs. Families were destroyed, children were displaced by the child-welfare system.

The Survivors are not the only ones whose lives have been disrupted and scarred by the residential schools. The legacy has also profoundly affected their partners, their children, their grandchildren, their extended families, and their communities. Children who were abused in the schools sometimes went on to abuse others. Some students developed addictions as a means of coping. Students who were treated and punished as prisoners in the schools sometimes graduated to real prisons.

These impacts cannot be attributed solely to residential schooling. But they are clearly linked to the Aboriginal policies of the federal government over the last 150 years. Residential schooling, which sought to assimilate each new generation of Aboriginal children, was both central to and an emblematic element of those policies.

The beliefs and attitudes that were used to justify the establishment of residential schools are not things of the past: they continue to animate much of official Aboriginal policy today. Reconciliation will require more than pious words about the shortcomings of those who preceded us. It obliges us to both recognize the ways in which the legacy of residential schools continues to disfigure Canadian life and to abandon policies and approaches that currently serve to extend that hurtful legacy.

This volume examines the legacy of Canadian policy of assimilation and the role of residential schools in it and in five specific areas: child welfare, education, language and culture, health, and justice.

Child welfare

The federal government and the churches believed that Aboriginal parenting, language, and culture were harmful to Aboriginal children. Consequently, a central objective of the residential schools was to separate Aboriginal children from their parents and communities to "civilize" and Christianize them. For generations, children were cut off from their families. At the height of the system in 1931, over 17,000 Aboriginal children were in residential schools. The schools were in many ways more a child-welfare system than an educational one. A survey in 1953 suggested that 4,313 of those students were thought to be suffering from "neglect" at home. From the 1940s onwards, residential schools increasingly served as orphanages and child-welfare facilities. By 1960, the federal government estimated that 50% of the children in residential schools were there for child-welfare reasons.

The schools were intended to sever the link between Aboriginal children and parents. They did this work only too well. Family connections were permanently broken. Children exposed to strict and regimented discipline in the schools not only lost their connections to parents, but also found it difficult to become loving parents.

Child-welfare agencies across Canada removed thousands of Aboriginal children from their families and communities and placed them in non-Aboriginal homes with little consideration of the need to preserve their culture and identity. Children were placed in homes in different parts of the country, in the United States, and even overseas. The mass adoptions continued between 1960 and 1990.

Aboriginal children are still being separated from their families and communities and placed in the care of child-welfare agencies. Like the schools, child-welfare agencies are underfunded, often culturally inappropriate, and far too often put Aboriginal children in unsafe situations. The child-welfare system is the residential school system of our time.

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tuberculosis—at rates far in excess of non-Aboriginal children.[17] Children who had been poorly fed and raised in the unsanitary conditions that characterized most residential schools were susceptible to a variety of health problems as adults. Many would later succumb to tuberculosis that they contracted in the schools.[18]

Sexual and physical abuse, as well as separation from families and communities, caused lasting trauma for many others. In many cases, former students could find no alternatives to self-harm.[19] The effects of this trauma were often passed on to the children of residential school Survivors and sometimes to their grandchildren.

The overall suicide rate among First Nation communities is about twice that of the total Canadian population. For Inuit, the rate is still higher: six to eleven times the rate for the general population. Aboriginal youth between the ages of ten and twenty-nine who are living on reserves are five to six times more likely to die by suicide than non-Aboriginal youth.[20]

Health disparities of such magnitude have social roots. They are stark evidence of federal policies that separated Aboriginal people from their traditional lands and livelihoods, confining them to cramped and inadequate housing on reserves that lacked the basic sanitary services. It was from these communities that residential school students were recruited and to them, their health further weakened, that they returned. A comprehensive health care strategy that recognizes the value of traditional healing practices is desperately needed to help close these gaps in health outcomes.

Justice

Residential schools inflicted profound injustices on Aboriginal people. Aboriginal parents were forced, often under pressure from the police, to give up their children to the schools. Children were taken far from their communities to live in frightening custodial institutions that felt like prisons. The children who attended residential schools were treated as if they were offenders and were at risk of being physically and sexually abused.

The Canadian legal system failed to provide justice to Survivors who were abused. When, in the late 1980s, that system eventually did begin to respond to the abuse, it did so inadequately and in a way that often re-victimized the Survivors. The Commission has been able to identify fewer than fifty convictions stemming from abuse at residential schools, a small fraction of the more than 38,000 claims of sexual and serious physical abuse that were submitted to the independent adjudication process that was established to assess and compensate residential school abuse claims.[21]

In many ways, the residential school experience lies at the root of the current over-incarceration of Aboriginal people. Traumatized by their school experiences, many succumbed to addictions and found themselves among the disproportionate number of Aboriginal people who come into conflict with the law.

Once Aboriginal persons are arrested, prosecuted, and convicted, they are more likely to be sentenced to prison than non-Aboriginal people. In 2011, Aboriginal people made up 4% of the Canadian population, yet they accounted for 28% of admissions to sentenced custody.[18] Of those admitted into provincial and territorial custody in 2011–12, Aboriginal females accounted for 43%, compared to 27% for Aboriginal males.[19] And in the same year, 49% of girls below the age of eighteen admitted to custody were Aboriginal, compared to 36% of males.[20]

There is a troubling link between the substance abuse that has plagued many residential school Survivors and the overincarceration of Aboriginal people. Fetal alcohol spectrum disorder (FASD) is a permanent brain injury caused when a woman's consumption of alcohol during pregnancy affects her fetus.[21] The disabilities associated with FASD include memory impairments, problems with judgment and abstract reasoning, and poor adaptive functioning.[22] Studies from Canada and the United States suggest that 15% to 20% of prisoners have FASD. A recent Canadian study found that offenders with FASD had much higher rates of criminal involvement than those without FASD, including more juvenile and adult convictions.[23] Diagnosing FASD can be a long and costly process and the lack of a confirmed diagnosis can result in the unjust imprisonment of Aboriginal people who are living with a disability. In this way, the traumas of residential school are quite literally passed down from one generation to another.[24]

As well as being more likely to be involved as offenders with the justice system, Aboriginal people are 58% more likely than non-Aboriginal people to be the victims of crime.[25] Aboriginal women report being victimized by violent crime at a rate almost three times higher than non-Aboriginal women—13% of Aboriginal women reported being victimized by violent crime in 2009.[26] The most disturbing aspect of this victimization is the extraordinary number of Aboriginal women and girls who have been murdered or are reported as missing. A 2014 RCMP report found that, between 1980 and 2012, 1,017 Aboriginal women and girls were killed and 164 were missing. Of these, 225 these cases remain unsolved.[27]

Conclusion

The Commission is convinced that genuine reconciliation will not be possible until the broad legacy of the schools is both understood and addressed. Canada has acknowledged some aspects of the ongoing legacy and harms of residential schools; the Supreme Court has recognized that the legacy of residential schools should be considered when sentencing Aboriginal offenders. While these have been important measures, they have not been sufficient to address the grossly disproportionate imprisonment of Aboriginal people, which continues to grow, in part, because of a lack of adequate funding and support for culturally appropriate alternatives to imprisonment. There has been an increase in Aboriginal child welfare agencies, but the disproportionate apprehension of Aboriginal children continues to increase because of a lack of adequate funding for culturally appropriate supports that would allow children to remain safely with their families.

Many of the individual and collective harms have not yet been addressed, even after the negotiated out-of-court settlement of the residential school litigation in 2006, and Canada's apology in 2008. In fact, some of the damages done by residential schools to Aboriginal families, languages, education, and health may be perpetuated and even worsened as a result of current governmental policies. New policies may be based on a lack of understanding of Aboriginal people similar to that which motivated the schools. For example, child welfare and health policies may fail to take into account the importance of community in raising children. We must learn from the failure of the schools to ensure that the mistakes of the past are not repeated in the future.

Understanding and redressing the legacy of residential schools will benefit all Canadians. Governments in Canada spend billions of dollars each year responding to the symptoms of the intergenerational trauma of residential schools. Much of this money is spent on crisis interventions related to child welfare, family violence, ill health, and crime. Despite genuine reform efforts, the dramatic overrepresentation of Aboriginal children in foster care, and among the sick, the injured, and the imprisoned continues to grow. Only a real commitment to reconciliation and change will reverse the trends and lay the foundation for a truly just and equitable nation.

* * *

The following chapters include Calls to Action as developed by the Truth and Reconciliation Commission. The Calls to Action in this volume are numbered according to the order in which they appear in *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. Also see the Calls to Action in this volume.

CHAPTER 1

Child welfare: A system in crisis

Introduction

Residential schools were an early manifestation of a child welfare policy of child removal that continues to this day. Since government and the churches believed that Aboriginal parents were inferior when it came to raising children, and could not be relied upon to raise them to be "proper" Canadians, a central objective of the residential schools was to separate Aboriginal children from their parents and communities to "civilize" and Christianize them.

For generations, children were cut off from their families. At the height of the system in 1953, just over 11,000 Aboriginal children were in residential schools.[1] A 1953 survey suggested that 4,313 of them were thought to be suffering from "neglect" at home.

The end of the residential school system did not mean that Aboriginal children were no longer forcibly separated from their families. Child welfare services carried on where the residential schools left off. More Aboriginal children are removed from their families today than attended residential schools in any one year. Following the inquiry into the death of an Aboriginal girl in Manitoba, the Honourable Ted Hughes concluded that the overrepresentation of Aboriginal children in care in Canada is "unconscionable" and "a national embarrassment."[2]

Why are so many Aboriginal children taken into care? Poverty, family violence, sexual violence, and substance abuse—conditions that are part of the sad legacy of residential schools—certainly play a role. The connection between residential schools and the present-day crisis of the overrepresentation of Aboriginal children in the child welfare system was painfully obvious to many Survivors who shared their statements with the Commission. Kay Adams explained that "all these years of growing up in the dorm I didn't go home to my family. I wasn't taught how to love. I wasn't taught how to be a family. I knew none of that."[3]

Tim McNeil felt the impact of residential schools when his children were older: "I was a good parent until my kids turned thirteen, and when my kids turned thirteen then I started parenting them the way that I was when I was in school. So suddenly my love was gone, my affection was gone, my time was gone. I started treating them the way I was treated in the dorm. And that was with strict rules, strict discipline, you had to follow a certain order, there was no love, there was no affection."[4] These Survivors suffered in residential schools. Their children suffered because of their suffering.

The perception that separation from their families is in the best interests of Aboriginal children may still be influenced by assumptions about the inferiority of Aboriginal parenting. These assumptions seem to be reflected in funding for child welfare services. Federal funding of on-reserve child welfare has been the subject of prolonged litigation before the Canadian Human Rights Commission and the Federal Courts since 2007. Aboriginal groups have long argued that not only is the amount of funding inequitable, but also the funding structure shows a preference for taking Aboriginal children into care rather than providing supports that would allow them to remain safely with their parents.[5]

At five years old, Daniel Big George and his four-year-old sister were taken to a residential school. He did not see his family for over two years. Reflecting on today's child welfare system, Big George observed, "they're utilizing the [Children's Aid Society] as how the residential school system was run."[6] At Commission hearings in Inuvik, Chief Norma Kassi agreed: "the doors are closed at the Residential Schools but the foster homes are still existing and our children are still being taken away."[7]

More than a century of taking Aboriginal children from their families

For many years the assimilation of all Aboriginal people was government policy, and residential schools were one of the tools used to implement that policy. At the same time, protecting Aboriginal children from their parents was often the stated reason for forcibly removing children from their homes. Aboriginal parenting was considered inferior, a prejudice that clearly shows in documents throughout the long history of residential schools.

In his 1879 report on residential schools, Nicholas Flood Davin wrote that "the children should be kept constantly within the circle of civilized conditions."[8] A few years later, in 1883, according to Indian Commissioner Edgar Dewdney, residential schools were preferable to day schools for producing workers:

> [It is] difficult to make day schools on reserves a success, because the influence of home associations is stronger than that of the school, and so long as such a state of things exists I fear that the inherited aversion to labour can never be successfully met. By the children being separated from their parents and property and regularly instructed not only in the rudiments of English language, but also in trades and agriculture, so that what is taught may not be readily forgotten, I

> can but assure myself that a great end will be attained for the permanent and lasting benefit of the Indian.[9]

Over two decades later, in 1915, the principal of the Kuper Island school in British Columbia wrote that the "only way" to educate Aboriginal children "is to bring them to an industrial school, where they are completely under the control of their teachers, and separated from the evil influences of most of their homes."[10]

These architects and administrators of the residential school system believed that Aboriginal children would be much better off away from their parents. Residential schools were often deliberately built at a distance from reserves to discourage Aboriginal parents from even visiting their children.[11]

Prejudice is embedded in policy

Compulsory schooling and school attendance has been in place in Canada since the 1870s. However, compulsory attendance laws provided that, for non-Aboriginal children, school attendance was not mandatory if the school was not conveniently close to the child. Non-Aboriginal children were not required to attend schools where they could not return to their families each day.[12]

In 1894, the *Indian Act* was amended to authorize the government "to secure the compulsory attendance of children at school."[13] Government officials had already noted the necessity for family ties to be "severed during the school term."[14] The *Regulations Relating to the Education of Indian Children* granted Indian agents and justices of the peace the power to authorize the apprehension and placement of Aboriginal children in industrial or boarding schools, if they were satisfied that their parents or guardians were "unfit or unwilling to provide for the child's education."[15] Indian agents were authorized to appoint truant officers with "police powers." A year later, the acting superintendent general of Indian Affairs asked the Department of Justice to develop a standard warrant for the removal of Aboriginal children from their families where "adequate provision is not being and will not be made for the care, or education or the education and care of the said [child]."[16]

Twenty years later, in 1914, an Indian Affairs circular was reminding Indian agents that the government had the power to place children "who are not being properly cared for or educated" in residential schools. Agents were told that "orphan children and children neglected by their parents should have the preference."[17] Thus, apprehending Aboriginal children, for assimilation purposes or in response to perceived neglect, became routine over a hundred years ago.

The 1940s and 1950s

Support for residential schools had decreased by the Second World War, and the federal government started closing residential schools in some parts of the country. However, in 1943, senior civil servant R. A. Hoey warned that places in residential schools would still be necessary for "orphans and children from disrupted homes."[illegible] With fewer places available, the emerging cadre of professional child welfare workers were to give priority to admitting children considered to be neglected.

In 1947, the Canadian Welfare Council and the Canadian Association of Social Workers collaborated on a report to a Special Joint Committee of the Senate and the House of Commons that was examining the *Indian Act*. The two organizations argued for the assimilation of Aboriginal peoples to ensure "not only their admission to full citizenship, but the right and opportunity for them to participate freely with other citizens in all community affairs."[illegible] The authors noted disparities in the education, health, and welfare services provided to Aboriginal people. They recommended immediate reforms to address the gaps. One of their recommendations was to investigate extending provincial education, health, and welfare services to reserves.

The provinces and territories assumed responsibility for child welfare services on reserves in the 1950s, facilitated by amendments to the *Indian Act* in 1951 that allowed all provincial laws of general applications to apply on reserve.[illegible] At first, the provinces and territories provided only emergency on-reserve services. With more federal funding, services expanded to receiving and assessing child protection reports, family services, guardianship of children in care, and adoption.[illegible] Funding mechanisms encouraged the removal of children from their homes because, while the federal government was willing to pay for child-in-care costs, there was considerable resistance by both federal and provincial governments to support preventive services.[illegible]

Even as some residential schools shut down, provincial child welfare authorities began to apprehend increasing numbers of Aboriginal children. Many were eventually given up for adoption, often to non-Aboriginal families.

The "Sixties Scoop"

The provincial social workers assigned to reserves assessed child safety and welfare by mainstream cultural standards. They received little or no training in Aboriginal culture. They were not trained to recognize problems rooted in generations of trauma related to the residential schools. Instead, they passed judgment on what they considered bad or neglectful parenting. As a result, beginning in the 1960s, provincial child welfare workers removed thousands of children from Aboriginal communities. It has been called the "Sixties Scoop."[illegible]

Aboriginal children were placed in non-Aboriginal homes across Canada, in the United States, and even overseas, with no attempt to preserve their culture and identity. The mass adoptions continued between 1960 and 1980.[16]

The Sixties Scoop children suffered much the same effects as children who were placed in residential schools. Aboriginal children adopted or placed with white foster parents were sometimes abused. They suffered from identity confusion, low self-esteem, addictions, lower levels of educational achievement, and unemployment.[17] They sometimes experienced disparagement and almost always suffered from dislocation and denial of their Aboriginal identity.

Canada ignores recommendations to support Aboriginal parents

Meanwhile, as Aboriginal children continued to be placed in residential schools and the mass adoptions of the Sixties Scoop were under way, some officials within Canada's Department of Indian Affairs, as well as outside experts, were recommending the better solution of providing supports for parents.

In 1965, I. B. Tully, superintendent of the Blood Indian Agency, wrote, "the main reason for the majority of younger children being in Residential School here is because their parents just cannot afford to properly feed and clothe them for part of the school year."[18] He suggested that it was not efficient to house a child in residential school for ten months per year when the parents had economic problems for only four months. In the absence of "welfare assistance" for the parents, however, he concluded that there was no practical alternative to placing children in residential schools.

A confidential 1966 report by the Department of Indian Affairs estimated that 75% of the children in residential schools were "from homes which by reasons of overcrowding and parental neglect or indifference are considered unfit for school children." Return to the reserve was considered undesirable because "the security that the child finds in the school is shaken on his return to the reserve."[19] The report noted that the substantial funds required for residential schooling might have been more usefully put towards "improving the home and training the parents" to increase "self support."[20] The report did not result in a policy change, and the money continued to go to the schools.

In 1967, George Caldwell, a child care specialist with the Canadian Welfare Council, investigated and reported to the federal government on placements in nine Saskatchewan residential schools. Caldwell noted that family welfare needs appeared to be the main reason for placing 80% of the children. Although "neglect" was frequently cited, Caldwell observed a "serious absence of recorded data on the child and the reason for admission is open to question because of this lack of information."[21] He recommended that services to assist Aboriginal families should "not be restricted to the narrow definition of investigating allegations or evidence of neglect of children, but recognition should be given to prevention of family deterioration, and professional services given to strengthen and maintain family life."

Caldwell, like the authors of the 1966 Indian Affairs report, believed that support for families would be a better and less drastic alternative to apprehending children or placing them in residential school. Caldwell's humane and sensible recommendations were also not adopted.

Apprehension put children in triple jeopardy

In a 1983 report for the Canadian Council on Social Development, Patrick Johnston wrote that the child welfare system placed Aboriginal children in "triple jeopardy," removed from parents, extended family, and culture:

> The effects of apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart. Frequently, when the Native child is taken from his parents, he is also removed from a tightly knit community of extended family members and neighbours, who may have provided some support. In addition, he is removed from a unique, distinctive and familiar culture.

As the Commission heard from some Sixties Scoop Survivors, the child welfare system continued a multigenerational cycle of displacement and alienation. Many children lost contact with both their families and their Aboriginal identity forever.

In a 1985 Manitoba public inquiry report, Associate Chief Judge Edwin Kimelman decried the systematic placement of thousands of Aboriginal children in white homes outside Manitoba and described the practice as "cultural genocide," which had "taken place in a systematic, routine manner." Judge Kimelman continued,

> An abysmal lack of sensitivity to children and families was revealed. Families approached agencies for help and found that what was described as being in the child's "best interest" resulted in their families being torn asunder and siblings separated. Social workers grappled with cultural patterns far different than their own with no preparation and no opportunity to gain understanding.

Survivors tell their stories

The residential schools failed to protect Aboriginal children from abuse, but so did many child welfare agencies. The Commission heard from many Survivors of both residential schools and the Sixties Scoop.

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Delivery of Aboriginal child welfare services

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the jurisdiction of the provinces and territories. To the extent that it provides funding for such services on reserves, it does so merely at its own discretion. Canada maintains that any obligation it may have ends at the borders of reserves. The provinces maintain that the federal government has constitutional responsibility for "Indians" and argue that the federal government has offloaded responsibility to the provinces to provide services to an increasingly urban, non-reserve population.[28] The result is that there are often disputes over which level of government or department is responsible for paying costs.

A 2005 survey of twelve First Nations child welfare agencies found that collectively, the agencies had experienced 393 jurisdictional disputes within the previous year. Each dispute required an average of 54.25 person hours to resolve, with some disputes taking up to 200 hours of staff time to sort out. The most frequent disputes were between the federal government's own departments (36%), between two provincial departments (27%), and between federal and provincial governments (14%).[29]

Funding formulas

Directive 20-1: "We had all the incentives wrong"

Beginning in 1990, most First Nations child and family service agencies received funding through a federal policy called "Directive 20-1." First Nations had little input in creating it. Until 2007–08, Directive 20-1 applied in all jurisdictions except Ontario.[30]

Directive 20-1 has two funding streams. "Operations" funds are intended to cover the cost of running a child welfare agency, including costs such as salaries and rent. Operations funding is based on the size of the child population the agency serves. "Maintenance" funds are intended to cover the full cost of maintaining children in care outside of their family homes.[31]

Directive 20-1 does not cover other types of services. Notably, it does not cover preventive services to support families. Not surprisingly, Directive 20-1 has come under fire. An evaluation by the Department of Indian and Northern Affairs Canada concluded that "the program's funding formula, Directive 20-1, has likely been a factor in increases in the number of children in care and program expenditures because it has had the effect of steering agencies towards in care options—foster care, group homes and institutional care because only these agency costs are fully reimbursed."[32]

Failure to provide supports to families that would assist them to maintain custody of their children could very well be a violation of international law. The *Convention on the Rights of the Child* requires states to provide assistance to ensure that the integrity of Indigenous families and communities is protected.[33] Directive 20-1 does not do so. Canadian officials are well aware of this. In 2011, Michael Wernick, then the deputy minister for the Department of Indian and Northern Affairs, pointed out the flaws to the Standing Committee on Public Accounts:

> What I think we identified, with the help of the work from the Auditor General, was that we had the incentives all wrong.… We didn't really have a funding formula that provided a lot of resources for prevention. In many cases, early intervention and prevention with the families in the communities means that the kids can be protected from harm and risk without having to be taken out of the home and put into care. So children in care is sort of a flawed measure as well for what we're trying to get at.[94]

The Enhanced Prevention Focused Approach

Canada responded to criticism of Directive 20-1 with a new funding formula called the "Enhanced Prevention Focused Approach." Operations and maintenance funding streams still exist, but there is now a third stream for prevention services with the goal of reducing out-of-home placements. In a further improvement over Directive 20-1, the Enhanced Prevention Focused Approach does not require block funding. Agencies have the flexibility to shift funds between streams to meet the needs of the community.[95]

The new funding formula is being rolled out based on tripartite agreements between Canada, the provinces, and First Nations child and family services agencies. Tripartite framework agreements based on the Enhanced Prevention Focused Approach have been negotiated in Alberta, Manitoba, Nova Scotia, Prince Edward Island, Québec, and Saskatchewan.[96] They have led to significantly increased funding.[97] Canada plans to negotiate agreements in all jurisdictions. In the meantime, Directive 20-1 continues to be applied in the remaining provinces despite its serious acknowledged flaws.

Shifting money between streams: A shell game

Funding for prevention services is certainly a welcome development, but the new formula is already raising concerns.

Maintenance funding is based on the actual costs of maintaining children in care from the year prior. Agencies dealing with an increase in the number of children in care then face deficits that must be covered by shifting resources from prevention and operations. The resulting lack of predictability makes it difficult for agencies to develop and sustain prevention programs.

As with Directive 20-1, operations funding continues to be based on the assumption that 6% of on-reserve children are in care (with the exception of Manitoba, which assumes 7%).[68] Agencies with a higher number of children in care will have fewer resources for operations and may have to cut prevention services to cover the shortfall. The auditor general expressed concern about this aspect of the new funding formula:

> The new formula does not address the inequities of the existing formula. It still assumes that a fixed percentage of First Nations children and families need child welfare services. Agencies with more than 6% of their children in care will continue to be hard-pressed to provide protection services while developing family enhancement services. In our view, the funding formula should be more than a means of distributing the program's budget; it should take into account the varying needs of First Nations children and communities.[69]

The Standing Committee on Public Accounts agreed, noting that "the result of this approach is that communities that need funding the most, that is, where more than 6% of the children are in care, will continue to be underfunded and will not be able to provide their children the services they need."[70]

Shifting money between program areas: Another shell game

Since 1996, the Department of Indian Affairs and Northern Development (which became the Department of Aboriginal Affairs and Northern Development in 2011) has capped annual department funding increases at 2%. But funding for the First Nations Child and Family Services Program budget has increased significantly, more than doubling from $193 million in 1997 to $450 million in 2007. These increases were funded by transferring money from other program areas, such as community infrastructure and housing.[71]

Starving community infrastructure and housing of funds is self-defeating and unsustainable. Neglected community infrastructure and poor housing conditions contribute to the growing number of child welfare cases that are causing the financial pressures on the system in the first place.

Will it work?

Shifting the money around would not be as serious a problem if the new funding approach could achieve the goals of preventing family violence, protecting children, and reducing the overrepresentation of Aboriginal children in care. It is still early days for the Enhanced Prevention Focused Approach, but the results of several formal evaluations conducted for the Department of Aboriginal Affairs have been, at best, mixed.

A 2010 evaluation by Indian Affairs and Northern Development Canada found that "the research is inconclusive regarding the extent to which prevention programming has been effective to date." The number of First Nations children in care increased after the new model was introduced. The average number of days in care also went up, though there were wide variations between agencies. A small number of agencies had increased prevention spending and also reduced the numbers of children in care, but the evaluation was unable to determine whether this was a direct result of prevention activities.[72]

Based on evaluations, in 2012 Aboriginal Affairs identified a series of issues undermining the effectiveness of the Enhanced Prevention Focused Approach: complex medical needs, the high cost of institutional care, an increase in older children coming into care, housing shortages and overcrowding, shortages of Aboriginal foster parents, lack of program supports for parents with addiction or mental health problems, and poverty.[73] Aboriginal Affairs noted that "agencies report that some families are unable to meet their basic needs (food, fuel for heating, transportation to medical appointments, etc.) and find themselves unable to care for their children."[74]

Because the most significant driver of high child welfare rates in Aboriginal communities is "neglect" that is actually tied to poverty, there are limits to how successful the new formula can be. The Enhanced Prevention Focused Approach does not put more money into the hands of Aboriginal families, provide them with safe housing, or put food on their tables.

Formulas for funding aside, the auditors general of Canada and British Columbia have concluded that Aboriginal child welfare agencies do not receive adequate funding to ensure equitable access to a level and quality of services comparable with those provided to other children.[75] The Government of Canada, in meaningful consultation with Aboriginal communities, should undertake immediate measures to ensure that Aboriginal child and family service agencies are provided with adequate and sustainable resources to ensure culturally based services regardless of their place of residence. Funding arrangements should ensure that Aboriginal agencies and communities have adequate resources to strengthen families so as to minimize the need for drastic interventions that take Aboriginal children away from their families.

Human rights complaint

There are several examples of the highly charged legal atmosphere surrounding services to Aboriginal children and families. In 2007, the Assembly of First Nations and the First Nations Child & Family Caring Society of Canada[76] filed a complaint with the Canadian Human Rights Commission under the *Canadian Human Rights Act*, alleging that Canada's failure to ensure equitable and culturally based child and family services for First Nations amounted to discrimination on the basis of race and national ethnic origin.[77]

Canada disputed the Canadian Human Rights Tribunal's jurisdiction to review the complaint and spent more than $3 million on legal proceedings aimed at getting the case dismissed.[78] Canada argued that a discrimination analysis should not be based on comparing federal levels of funding to those of the provinces and territories. If accepted, that argument would render the concept of discrimination meaningless with respect to Aboriginal peoples. The federal government could, with impunity, deny Aboriginal peoples the quality of services enjoyed by all other groups in Canada simply by saying that there is no basis for comparison.

In 2011, the tribunal accepted Canada's arguments and dismissed the human rights complaint, ruling that the Canadian human rights regime "does not allow a comparison to be made between two different service providers with two different service recipients. Federal funding goes to on-reserve First Nations children for child welfare. Provincial funding goes to all children who live off reserve. These constitute separate and distinct service providers with separate service recipients. The two cannot be compared."[79]

On judicial review, the Federal Court and the Federal Court of Appeal soundly rejected this restrictive approach as unreasonable.[80] The Federal Court of Appeal ordered the Canadian Human Rights Tribunal to hear the case.[81] In concluding that the tribunal's decision to dismiss the case was unreasonable, the court emphasized that "discrimination is a broad, fact-based inquiry" that requires "going behind the façade of similarities and differences" and "taking full account of social, political, economic and historical factors concerning the group."[82]

The Canadian Human Rights Tribunal has been hearing evidence sporadically since February 2013, although a lengthy adjournment was required when Canada disclosed an additional 50,000 pages of documents. The hearing was completed in October 2014. At the time of writing, it is anticipated that the tribunal will publish its decision in 2015.

The litigation in this case has been particularly prolonged. The federal government's aggressive approach aligns awkwardly with its recognition and apology regarding the ongoing legacy of residential schools in child welfare cases.

Jordan's Principle

The repercussions of these disputes over jurisdiction can be serious. Aboriginal children pay the highest price, especially children with complex developmental, mental health, and physical health issues.[83]

Jordan River Anderson was a member of the Norway House First Nation in Manitoba. He was born with complex medical needs. Jordan remained in hospital two years longer than medically necessary while the provincial and federal governments fought over who would pay for his at-home care. Before the two governments could come to an agreement, Jordan died, at age five, never having spent a day in a family home.[84]

In theory, situations such as Jordan's should not arise again. On December 12, 2007, the House of Commons unanimously supported a private member's motion (M-296) stating that "the government should immediately adopt a child-first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children."[85] According to Jordan's Principle, the government department that is first contacted for a service readily available off reserve must pay for it while it is pursuing reimbursement for the expenses.[86]

Jordan's Principle was not passed as legislation. It is merely a statement by Parliament.[87] The Canadian Paediatric Society noted in 2011 that not one province or territory had implemented a child-first approach to resolving jurisdictional disputes over services provided to First Nations children and youth.[88] Jurisdictional disputes continue to delay Aboriginal children and families' access to services.

3) We call upon all levels of government to fully implement Jordan's Principle.

Jeremy's case

An Aboriginal family from Pictou Landing, Nova Scotia, went to court in 2013 seeking to enforce Jordan's Principle so that a disabled child would receive the supports he required to remain in the family home and avoid institutionalization.[89] Both levels of government took the position that the child was not entitled to the supports his family had requested. Since both governments denied entitlement, they both took the position that in fact there was no jurisdictional dispute and Jordan's Principle did not apply. The Federal Court concluded that both levels of government were wrong and that the child was entitled to the services. The court ordered Canada to pay the necessary costs.

The costs for one child had consumed 80% of the six-hundred-member band's budget for personal and home care services. The judge stressed that "Parliament has unanimously endorsed Jordan's Principle and the government, while not bound by the House of Commons resolution, has undertaken to implement this important principle."[90] The judge also noted that the only other option for Jeremy would be institutionalization and separation from his mother and his community. His mother is the only person who, at least at times, can understand and communicate with him.

First Nations child and family services agencies

In the early 1980s, Indian Affairs and Northern Development Canada (as it was then called) began approving the establishment of First Nations child and family service agencies on reserves on a case-by-case basis. The first were established in Alberta, Manitoba, and Nova Scotia. Canada now provides funding to 106 Aboriginally controlled agencies. In 2010–11, 9,242 Aboriginal children were outside of the parental home and in the care of First Nation child and family service agencies, which represents 5.6% of on-reserve children.[91]

A few larger Canadian cities (such as Toronto and Vancouver) also have First Nation child and family service agencies.[92] There are none in the territories, where the same agencies that serve all children provide services to Aboriginal children. In Yukon, Canada provides funding for these services to the territorial government. The funding arrangement is slightly different in the Northwest Territories and Nunavut, where there are territorial transfer agreements with the federal government.

Canada rejected First Nation demands to operate services in accordance with traditional laws and traditional justice systems. By contrast, in the United States, tribal courts have played an important role in the child welfare system since 1978.[93]

Persistent problems

The discouraging news is that, despite the expansion of First Nations child and family services agencies, the overrepresentation of Aboriginal children in care continues. Sometimes, the emphasis has seemed to be on simply creating more First Nations agencies.

There is a lack of vision for a system that can truly serve Aboriginal peoples. The BC Representative for Children and Youth has had some harsh words on the subject for the parties involved in child welfare in that province: "There is no clear direction as to how the Aboriginal child welfare system will be improved; there is no observable logic between how the current Aboriginal governance and service structure initiatives will improve services and there is no monitoring of the impact of the various initiatives undertaken to date."[94]

It is also troubling that the ability of First Nations child and family services agencies to develop culturally appropriate services has been constrained by inadequate funding. Of twelve First Nations agencies surveyed in 2005, 83.4% reported that they did not receive enough funds to ensure culturally appropriate services.[95] This hinders their capacity to provide effective services and contributes to the continuing overrepresentation of Aboriginal children in care.

Overrepresentation of Aboriginal children in care

The data picture is far from complete

Data on Aboriginal children in child welfare care is not collected in a uniform and accessible manner across the country. Each province and territory has its own child welfare system, with different definitions of terms such as *child in care* and different methods for collecting information. Some data collection systems allow for comparison between Aboriginal and non-Aboriginal children but others do not. In terms of the reasons for investigations, the grounds for interventions, and the characteristics of children and families who are investigated, the picture across the country is far from complete.

Children may be placed in foster care, in group homes or residential facilities, or with relatives (often called kinship arrangements). However, whether a child welfare agency defines the child as being in care depends on factors such as the type of placement, whether it is formal or informal, and whether it is permanent or temporary. Direct comparisons are difficult, making national statistics ambiguous. Thus, it is a challenge to compile reliable statistics about the number of Aboriginal children in care at any given time.

Alarming findings from recent research

The Public Health Agency of Canada, a federal agency designed to promote health and apply research to health problems, has partnered with some of Canada's leading child welfare researchers to develop the Canadian Incidence Study of Reported Child Abuse and Neglect. The study is developing information about the incidence of child welfare investigations in Canada, the numbers of children in care, the reasons for child welfare agency involvement with families, and the types of family stressors that can lead to child maltreatment.[96] So far, the study has analyzed data collected from selected child welfare agencies across the country in 1998, 2003, and 2008.[97]

In 2011, for the first time, the study published a First Nations Component, based on data collected in 2008.[98] The First Nations Component is a result of a partnership between the study's research team and the First Nations Component advisory committee, which includes representatives from national and provincial First Nations child welfare organizations.[99] It includes data from 89 provincial/territorial agencies, 22 First Nations and urban Aboriginal agencies, and 1 Métis agency (on a pilot basis).[100]

The authors of the 2011 First Nations Component of the Canadian Incidence Study of Reported Child Abuse and Neglect note that First Nations child welfare agencies vary enormously. Added to resource limitations, this made it impossible for the researchers to identify a sample of First Nations agencies that could reliably represent all such agencies. Thus, the study findings cannot be generalized and can only be said to apply to children living in the geographic areas served by the sampled agencies.[111]

Nevertheless, the findings point to vast overrepresentation of Aboriginal children in care. The study found that investigations involving Aboriginal children resulted in formal child welfare placements, including foster care, group home, and residential secure treatment (but excluding informal kinship care) at 12.4 times the rate for investigations involving non-Aboriginal children.[112] Placements into informal kinship care occurred at 11.4 times the rate for non-Aboriginal children. Overrepresentation in the latter category may not be entirely negative if it indicates that child welfare agencies were increasingly respecting the informal kinship structures in Aboriginal communities. Nevertheless, the number of Aboriginal children in formal care placement was found to be grossly disproportionate.

Statistics Canada's 2011 National Household Survey provides some further insight. The survey found that 14,225 Aboriginal children under the age of 14 were in foster care, representing 3.6% of all Aboriginal children under the age of 14. To put that in perspective, at the height of the residential school era, 10,112 students were in those schools.[113] Only 15,345 non-Aboriginal children were in foster care, representing 0.3% of non-Aboriginal children.[114] Figures from the 2011 Canada Household Survey show that, although Aboriginal people make up only 4.0% of Canada's population, Aboriginal children represent almost half (48.1%) of all children aged 14 and younger in foster care in Canada.[115]

The percentages vary considerably across the country, but Aboriginal children in care are grossly overrepresented in all the jurisdictions for which data is available. Table 1.1 shows stark differences in Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia.[116]

Table 1.1
Aboriginal children in care vs. their proportion of provincial child populations

Province	Aboriginal children as a % of the total child population	Aboriginal children as a % of children in care
Nova Scotia	6	16
Québec	2	10
Ontario	3	21
Manitoba	23	85
Saskatchewan	25	80
Alberta	9	59
British Columbia	8	52

Source: Extracted from Sinha et al., *Kiskisik Awasisak: Remember the Children: Understanding the Overrepresentation of First Nations Children in the Child Welfare System*, 5.

NB: Data for New Brunswick and Canadian territories were not publicly available. Data collection protocols vary from province to province.

Among those provinces, Ontario's rate of overrepresentation is the most disproportionate, with seven times as many Aboriginal children in care as their proportion of the population. Statistics are not available for the territories, but the ratios could be even higher than those for the western provinces given that the North has more recent experience with residential schools.

International criticism

International law recognizes that children require special care in order to ensure that they enjoy fundamental human rights and dignity. The preamble of the United Nations *Convention on the Rights of the Child* states that to ensure that a child has the opportunity for "the full and harmonious development of his or her personality, [he or she] should grow up in a family environment, in an atmosphere of happiness, love and understanding." In safe and secure homes, children can be "brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity."

Concern for the "best interests of the child" is a central feature of the *Convention on the Rights of Child* and, in particular, must guide decisions about child welfare. In *Commentary 11*, the United Nations Committee on the Rights of the Child considered the application of international children's rights to Indigenous peoples, and stated clearly that it is in the best interests of children to be raised in a setting that respects their ethnic, religious, cultural, and linguistic background.[illegible] Indigenous children have the right to the preservation of their identity, including their nationality, name, and family relations. Where a child is illegally deprived of some or all of the elements of their identity, states must provide assistance to re-establish that identity.[illegible] Parents, extended families, and communities have rights, responsibilities, and duties when it comes to raising children, and the Convention requires states to provide assistance to ensure that the integrity of Indigenous families and communities are protected. The best interests of the child are the paramount consideration in any alternative care placement of Indigenous children.[illegible]

These international law principles are also firmly entrenched in the *Declaration on the Rights of Indigenous Peoples*. The declaration prohibits the forcible removal of Indigenous children to other groups.[illegible] Indigenous peoples also have the right to identity and to the preservation of their language and culture.[illegible] These rights are threatened by child welfare decisions that remove children from their families and communities without due consideration being given to these issues.

The overrepresentation of Aboriginal children in Canada's child welfare system has not gone unnoticed in the international community. In 2006, the United Nations Committee on Economic, Social and Cultural Rights noted "with concern

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Why are so many Aboriginal children in care? The links to residential schools

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In cases of maltreatment investigations, poverty was much more prevalent in Aboriginal families. They were more likely to rely on income supports such as social assistance (49%) than non-Aboriginal parents (26%).[100] The researchers suggest that the high rate of Aboriginal child welfare investigations reflect "challenges linked with poverty."[101] It follows that reducing social assistance to Aboriginal parents may increase child welfare apprehensions. The direct connection between Aboriginal poverty and high child welfare apprehensions has been known for half a century. Yet Aboriginal children are still being taken away from their parents because their parents are poor.

First Nations represent ninety-six of the one hundred most disadvantaged communities in Canada.[102] Reserve communities have very limited emergency housing, food security, wellness and addictions services, supports for families, and recreation services. More research is needed, but the evidence suggests that the disproportionate number of Aboriginal children taken from their parents for "neglect" is tied to poor funding for their schools and health care services as well as other factors related to the legacy of residential schools.

True neglect is undoubtedly a threat to a child's health and well-being. However, the Commission is deeply concerned that the concept of neglect may be used to target Aboriginal families for child apprehensions. To eliminate any systemic discrimination and unconscious bias as a legacy of residential schools, it is clear that neglect investigations and outcomes should be assessed and monitored based on clear evaluation criteria.

For over a hundred years, Canadian law has, in various ways, continued to authorize government officials to take Aboriginal children away from their parents. The federal government funds child welfare services on reserves, but provincial laws are generally applied. Provincial and territorial child welfare laws continue to allow officials to apprehend Aboriginal children who are deemed to need protection. Parental rights can be curtailed or even ended if a judge determines that it is in the best interests of the children.[103]

Withdrawal from the child welfare field is not possible. That would leave many Aboriginal children vulnerable. However, without action to reduce the number of Aboriginal children taken from their families, the child welfare system itself will take the place of residential schools in doing damage to them. As adults, the children taken into care in the years to come will place high demands on social assistance and the health and justice systems. They will struggle economically and socially. They may pass damage on to their own children.

a) We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:

  i. Monitoring and assessing neglect investigations.

ii. Providing adequate resources to enable Aboriginal communities and child welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.

iii. Ensuring that social workers and others who conduct child welfare investigations are properly educated and trained about the history and impacts of residential schools.

iv. Ensuring that social workers and others who conduct child welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.

v. Requiring that all child welfare decision makers consider the impact of the residential school experience on children and their caregivers.

2) We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children, as well as the reasons for apprehension, the total spending on preventive and care services by child welfare agencies, and the effectiveness of various interventions.

Deaths of Aboriginal children in care

It is very difficult to get a clear picture of Aboriginal child welfare across the country, but information about deaths of Aboriginal children in care is even more fragmentary. Where province-specific statistics are available, they are very troubling. In some parts of the country, Aboriginal children who come into contact with child welfare authorities are more likely to die than their non-Aboriginal counterparts.

In January 2014, the *Edmonton Journal* published a series of articles about deaths in Alberta's child welfare system. Alberta had never publicly reported on deaths of children in care. The newspaper's investigation revealed that Aboriginal children accounted for 78% of children who died in foster care between 1999 and 2013.[119] Aboriginal children are a small minority but represent 59% of children in care in Alberta. Yet the number of Aboriginal child deaths in care is even more disproportionate than the number of them in care in the first place. Of the seventy-four Aboriginal child deaths recorded in foster care, thirteen were due to accidents, twelve committed suicide, and ten were the victims of homicide.[120]

Forty-five of these Aboriginal children died while in the care of a provincial child welfare agency and twenty-nine died in the care of an on-reserve First Nations child and family service agency. Since First Nations agencies care for only a fraction of the children (27% in 2012–13) Aboriginal children are much more likely to die if they are in care on reserve. According to reporter Darcy Henton, this statistic "starkly highlights the federal/provincial funding disparity that gives off-reserve aboriginal children more services and more support."[146]

In the outcry following the *Edmonton Journal*'s revelations, the Alberta Centre for Child, Family and Community Research obtained more information about child welfare deaths from the provincial government. Their analysis showed that "Aboriginal children were much more likely than non-Aboriginal children to enter the intervention system, and had higher rates of mortality than non-Aboriginal children once they were in the system."[147]

By contrast, in British Columbia, a review covering the period between 1997 and 2005 found that Aboriginal children and youth represented 34% of children in care and 36% of the deaths.[148] While this roughly equal figure is not cause to celebrate, it illustrates that it is difficult to generalize about the scope of the problem across the country.

In Ontario, under a joint directive from the Coroner's Office and the Ministry of Children and Youth Services, children's aid societies report child deaths when the child or family was involved with child welfare in the year prior to the death. There are approximately one hundred such deaths in Ontario each year, representing about 8% of all child deaths in Ontario.[149] The Coroner's Office's Paediatric Death Review Committee chooses a subset of these cases for more extensive review, generally excluding cases in which the death was due to expected or uncomplicated natural causes. In 2012, 29% of the reviewed cases involved Aboriginal children.[150] (Twenty-one per cent of children in care in Ontario are Aboriginal.)[151] The committee found that in many of the Aboriginal cases, there were issues related to the child welfare agency's capacity to meet ministry requirements. A strained relationship between child welfare agencies and local First Nations communities was also identified as a problem.[152]

Death is only the most extreme example of harm coming to a child. This sample of experiences from different provinces strongly suggests that Aboriginal children in care specifically, disproportionately, and on a widespread basis throughout the country, continue to be deprived of services they require and protections they deserve.

The death of Phoenix Sinclair

Phoenix Sinclair was a healthy baby girl born to Aboriginal teenage parents in Manitoba. Both parents had troubled pasts, and because of their own history as foster children, they intensely mistrusted the child welfare system. Phoenix was taken into care twice during her five years of life. She was twice returned to her family, with little support, on either occasion. The caseworkers assigned to her changed frequently. They had little face-to-face contact with the family or with Phoenix herself.

At least thirteen times, Winnipeg Child and Family Services received notices of concern about Phoenix's safety and well-being. In 2005, three months after the last notice, her mother and her mother's partner killed her. Her death went undiscovered for nine months.[153]

A commission of inquiry examined Phoenix's life, the services she received through Winnipeg Child and Family Services, and Manitoba's child welfare system generally. Former Saskatchewan judge Ted Hughes led the inquiry. He found that child welfare workers lacked awareness of the reasons families came into contact with the child welfare system and the steps caseworkers should take to support them. In Phoenix's case, caseworkers repeatedly closed her file, with minimal investigation, because they concluded that Phoenix was not in danger in the short-term. They failed to consider her long-term risk.[154]

Reporting on the inquiry in 2014, Justice Hughes noted that new practices had been put in place in recent years to identify families that needed help earlier, to assess a family's needs and strengths, and to provide services to enable them to keep their children safely at home. However, Justice Hughes also found that many of the services and supports families needed were still missing.[155] He endorsed a "prevention" approach that provides essential services to all children, accessible without the need to come into contact with a child welfare agency first.[156] This approach would draw on many resources within Aboriginal communities and support parents and families in a culturally appropriate way. Social workers would need better training in this scenario, including education on the legacy of residential schools.

Justice Hughes pointed out that the child welfare system alone cannot solve the child welfare problem. Nor can it address the fact that over 80% of children in care in Manitoba are Aboriginal, which he called a "national embarrassment." He wrote that Aboriginal children are overrepresented in the child welfare system because they live in "far worse circumstances than other children," for reasons that are "rooted in the legacy of colonization and residential schools, the conditions on reserves, cultural dislocation and loss of identity."[157] Observing that the child welfare system was doing a poor job of connecting families with the supports that are available to them, Justice Hughes acknowledged that the system could do little to alleviate poverty or the underlying causes of substance abuse, family violence, and sexual abuse.

Justice Hughes called for a collaborative approach: "Working with parents and harnessing the collective resources of child welfare and other provincial government departments, other levels of government, and the province's many community-based organizations, can make a difference to vulnerable families."[158] Central to such a collaboration would be the inclusion of Aboriginal governments, communities and community organizations, and families.

Following Phoenix Sinclair's death, the Manitoba Office of the Children's Advocate conducted a "child death review" of the deaths of all children, from January 2004 to May 2006, who were in receipt of child welfare services within one year of their death. Of the 145 deaths in the period, 99 files were available for review. The review concluded that no child died as a direct result of a breakdown in the provision of child welfare services, but there was a "pattern of difficulties that may have led to the death of the child." Many cases revealed a lack of appropriate community services, or if services did exist, they were difficult to access or coordinate.[159] Of the child deaths included in the study, 76% were Aboriginal or Métis [*sic*] and 24% were non-Aboriginal. The authors point out that "these figures closely follow the breakdown of children involved in the child welfare system, but given the fact that Aboriginal people comprise 14% of the total population, it appears that Aboriginal, including Métis children, are overrepresented in both the child welfare system and the deaths of children in general." Deaths by suicide appeared to be driving the higher mortality rates for Aboriginal children.[160] Eleven of the twelve suicides included in the study were Aboriginal children. Half of these deaths occurred while the children were in foster care.[161]

Deaths at the hands of others occurred with terrible frequency. Eighteen of the ninety-nine deaths reviewed were homicides. Aboriginal children accounted for fourteen of those deaths. Seven of the eighteen homicides involved children who, like Phoenix, were under the age of five. All of them were killed by a parent or caregiver, whether Aboriginal or non-Aboriginal. The killers of the older children were generally people outside the child's family. The review noted that "the majority of these children were living in homes with a very high level of risk to the children, but none had received a formal risk and/or safety assessment conducted when they first came into contact with a child welfare agency or when they were moved or returned to their family."[162] Authorities most often reported high-risk children as "absent without leave" when they went missing.[163]

The Inuit experience with child welfare

Almost 60,000 Inuit people live in Canada.[164] Inuit also live throughout the circumpolar Arctic region, including parts of the United States (Alaska), Russia, and Denmark

(Greenland). Three-quarters of Canadian Inuit live in the traditional homeland known as Inuit Nunangat. Inuit Nunangat consists of four regions: Nunatsiavut in Newfoundland and Labrador, Nunavik in Northern Québec, Nunavut Territory, and Inuvialuit in the Northwest Territories. The Inuit have traditionally occupied these areas, but the regions are not fully autonomous self-governing entities. Of the approximately 16,000 Inuit people who live outside Inuit Nunangat, 37.5% live in large urban centres such as Ottawa and Montréal. The Inuit population is one of the youngest and fastest growing in Canada. About 40% of Inuit in Nunavik and Nunavut are under the age of 15.[165]

After the federal government forced Inuit people to move off the land and into permanent settlements in the 1950s, Inuit communities made significant attempts to regain self-determination and follow *Inuit Qaujimajatuqangit* (Inuit traditional knowledge). Traditional knowledge is grounded in principles for living a good life, including working for the common good, respecting all living things, maintaining harmony and balance, and planning and preparing for the future.[166]

Inuit communities are not organized by reserve or band systems like First Nations communities. Instead, they work within municipal and legislative models. The relatively new territory of Nunavut has the largest Inuit population and has incorporated Inuit traditional knowledge into all aspects of its formal governance, management, and operational structures. This has both successes and limitations.[167] Each Inuit region of Inuit Nunangat has gained increased control of the administration of social services, including child and family services. All regions struggle to build capacity to deliver these services, including the particular challenge of developing child welfare services that are culturally appropriate and take into account traditional Inuit practices of childrearing.[168]

Traditional Inuit parenting

Traditional Inuit parenting is based on kinship relationships and cultural and spiritual beliefs. Inuit believe that a newborn named after a deceased relative takes possession of that relative's soul or spirit, and this is reflected in the parents' relationship with the child.[169] According to the national Inuit women's association, Pauktuutit, it "would not be considered appropriate ... to tell a child what to do, as this would be the equivalent of ordering an elder or another adult about, thus violating an important social rule in Inuit culture."[170]

Ignorance of this aspect of Inuit culture caused many non-Aboriginal people, including residential school administrators and child welfare officials, to make culturally biased judgments. They often saw Inuit parents as extremely permissive and indifferent to discipline.[171] At the residential schools, in contrast, teachers attempted to control a child's behaviour through corporal punishment and other harsh disciplinary measures distasteful to Inuit parents.

Inuit custom adoption

In Inuit custom adoptions, the children have knowledge of and access to their birth parents. Traditionally, Inuit grandparents were integral in helping to raise their grandchildren, as well as orphaned or neglected children, through custom adoption. Inuit researcher Heather Ochalski points out that, traditionally, "many grandparents adopted their biological grandchildren. They often took orphaned children in as their own and called them *panik* (daughter) or *irnik* (son) ... Sometimes they took them in briefly to help the biological parents that were nearly starving and returned them to their parents when they were back on their feet."[172]

Residential schools and child welfare apprehensions eroded custom adoption practices, along with many other values and traditions of Inuit culture. Because they found Inuit names difficult to pronounce and spell, non-Aboriginal officials changed names to accord with Christian traditions. They imposed the European tradition of naming women and girls after the male head of the household, which devalued traditional kinship ties and imposed unfamiliar belief that females were inferior. From the 1940s to the early 1970s, the federal government assigned numbered disks as a naming system for Inuit, or "Eskimos" as the government and others called them. Despite the pressures, many Inuit continued to name their children after their ancestors and maintain traditional beliefs about naming practices.[173]

Inuit communities get residential schools

The residential school system was fully operational in the rest of Canada by the time the federal government extended it to the Eastern Arctic in 1955. Until then, the government had largely ignored the Inuit.

The Inuit began moving closer to trading posts and trapping non-traditional animals to benefit from the fur trade, but poverty and the loss of a way of life was too often the result.[174] American officials witnessed these tragedies from their vantage point along the Distant Early Warning (DEW) Line sites spread across the Arctic Inuit homeland. The international criticism that followed prompted the Canadian government to establish residential schools for Inuit children on so-called humanitarian grounds.[175]

The *Indian Act* was amended in 1951 to state that "the race of aborigines commonly referred to as Eskimos" was not entitled to the legal rights and benefits defined for

Indians. This legal status did not protect Inuit children from being forced to attend residential schools.[176]

Most Inuit parents did not want this compulsory school system and tried to prevent their children from attending or returning to the residential schools and day schools. Researcher David King reports that the Family Allowance program, introduced in 1944 for families with children aged sixteen and under, encouraged school attendance. The government did not have an official policy of denying Family Allowance payments to families who refused to send their children to residential school, but it was federal policy to withhold these payments if students were not attending either residential or day school.[177]

There was a significant increase in the number of Inuit students attending day and residential schools between 1956 and 1963. During that time, attendance rose from 201 to 1,173 in the Eastern Arctic. In the Western Arctic, attendance rose from 1,755 to 3,341.[178]

As at the residential schools in the South, students were separated from their cultural practices and teachings. Inuit Elders were not allowed to be part of the education system in their traditional role as cultural teachers. Inuit children attending residential schools were expected to behave like *Qallunaat* (white people) in their communication, dress, and eating habits. The traditional diet was considered unhealthy because meat and fish were eaten raw. Inuit children were stripped of their Inuit name, family, language, and culture, and subjected to verbal, psychological, physical, and sexual abuse.[179]

Without their cultural teachings, Inuit children who attended the residential schools lacked the knowledge and tools to raise their own children in traditional ways. The cumulative effect of these experiences continues to affect Inuit communities and families, and it is within this context that contemporary Canadian Inuit child welfare issues must be addressed.

From residential schools to child welfare in Inuit communities

The systemic abuse and breakdown of the culture and traditions that supported the health and well-being of Inuit families had far-reaching effects in Inuit Nunangat, profoundly changing family relationships. Anthropologist Nelson Graburn wrote that the vast majority of historical descriptions "bear little evidence of any kind of child abuse among the [Inuit] peoples."[180] But the residential schools deprived Inuit children of the opportunity to learn how to parent in traditional ways and left many students with the lifelong effects of trauma.

When residential school Survivors became parents, some modelled the harsh discipline and abusive punishments they had been subjected to as children. Today's

Inuit children, like First Nations and Métis children in other regions of the country, now bear the burden of the intergenerational trauma of the residential school era. Physical and emotional abuse suffered during childhood, loss of culture, overcrowded housing, and widespread drug and alcohol addiction all contribute to the prevalence of child abuse.[illegible]

Conditions for too many Inuit children include low educational outcomes, poverty, food insecurity, exposure to communicable diseases, poor health, family violence, intergenerational trauma, the loss of coping strategies, and epidemic suicide rates.[illegible]

In many Inuit communities, healthy food is very expensive. A single [illegible] sells for $99.53; a head of lettuce for more than $28; and four tomatoes for $8.29.[illegible]

Isolation, addictions, and a lack of resources and services can make it very difficult for Inuit parents to provide safe and healthy environments for their children, which increases the prospects of child welfare apprehension. The child welfare system in Inuit Nunangat is unable to deal with these challenges effectively.

Since the Inuit homeland is spread out over several territories and provinces, child welfare services depend largely on where an Inuit family lives. There are no Inuit-specific (or even Aboriginal-specific) child protection agencies in the North, although most of the child welfare laws include requirements to take the particular needs of Aboriginal children into account. Unlike the southern regions, child welfare services tend not to be specialized. Instead, child protection is often simply one of many responsibilities of local health and social service centres that must also deliver other types of supports and programs. For example, in addition to child and family services, social workers often also provide services to the elderly and people with disabilities.[illegible]

Northwest Territories

In the Northwest Territories (NWT), the Department of Health and Social Services is responsible for the delivery of child and family services, including providing for the protection and well-being of children and youth through setting standards and ensuring compliance with policy and legislation. These services are currently delivered through six regional health and social services authorities and the Tłı̨chǫ Community Services Agency (established under the Tłı̨chǫ Land Claims and Self-Government Agreement). There are approximately seventy-five frontline workers and supervisors assigned to child protection duties across the Northwest Territories.

In an effort to improve service delivery, effective April 1, 2016, a new Northwest Territories Health and Social Services Authority will be established, which will replace the six existing regional authorities and work with the Tłı̨chǫ Community Services Agency. Regional advisory councils will provide leadership and guidance to local program delivery to ensure that services remain culturally responsive. In the future, Aboriginal governments in the NWT may choose to exercise jurisdiction over child and family services.[illegible]

Child welfare legislation requires that the child's cultural, linguistic, and spiritual or religious upbringing be considered. In addition, the child's Aboriginal community must be notified of any application for a child protection court order. There is also a provision for Aboriginal community councils and Aboriginal non-profits to form child and family services committees. These committees can participate in case planning for Aboriginal children and families. The *Aboriginal Custom Adoption Recognition Act* allows for the privately arranged adoption of children in a manner that respects cultural traditions.[illegible]

The rate of child welfare investigations is very high. The 2008 Canadian Incidence Study of Reported Child Abuse and Neglect found a rate of 145.08 child maltreatment investigations per 1,000 children.[illegible] Although this was not further broken down by Aboriginal identity, it is safe to assume that Inuit children would be deeply affected given that more than half of the population of the Northwest Territories is Aboriginal.[illegible] By comparison, the investigation rate for all of Canada was only 39.16 per 1,000.[illegible] In general, the Northwest Territories mirrored other trends identified in the Canadian Incidence Study of Reported Child Abuse and Neglect, with the top three categories of substantiated child maltreatment being neglect, exposure to domestic violence, and physical abuse. However, the rate of neglect investigations in the Northwest Territories was very high: 51% as compared with the national rate of 34%.[illegible]

Nunavut

In Nunavut, where Inuit represent the large majority of the permanent population, there are no distinct Aboriginal or Inuit child welfare agencies. However, the territorial government has made a commitment to integrate Inuit social values into all programs and services. The Department of Health and Social Services is responsible for the delivery of all health and social services, including child welfare services. Community social workers provide a range of programs in addition to child protection, including early intervention and support to families, adoption services, and family violence prevention.[illegible] As in the Northwest Territories, Aboriginal community councils and non-profits can form child and family services committees to participate in case planning for Aboriginal children and families. As with many territorial government laws and policies modelled on those in the Northwest Territories when Nunavut was created in 1999, Nunavut also has an *Aboriginal Custom Adoption Recognition Act*, which allows for private adoptions of Inuit children in a manner that respects cultural traditions.[illegible]

[illegible]

[illegible]

Newfoundland and Labrador

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Nunavik

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The Métis experience with child welfare

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much of what was produced in the farm programs was sold to business interests to support the schools and not used to feed the children."[illegible]

The intergenerational impacts of Métis experiences in residential and day schools include the loss of parenting skills, the inability to express feelings, and the loss of language and culture. Elmer Ghostkeeper, a Métis Elder from Alberta has eloquently expressed the impact of the residential school experience:

> Love is the greatest emotion in Métis families and this love for each other was greatly impacted by residential schools. Our ways of being as families were also affected. Our family life included fishing, hunting, and family activities such as learning language, berry picking, social time, baby caring traditions, and rites of passage. Our children were [illegible] through the residential school system and lost those connections to our culture.[illegible]

Métis Elder Deborah Dyck recounted her story of attending Cranberry Portage school in Manitoba as a day student. Both of her parents taught at the school and tried to show kindness in the harsh environment. She recalled that "the residential setting was totally different than what Native kids were used to, it didn't have the many relationships.... As a people, the Métis had to be so resilient and ever changing to live with an environment that was ever changing and moving. We were made stronger by this."[illegible]

Métis cultural consultant Tom McCallum, who attended residential school in Saskatchewan, reflected on parenting and residential schools:

> The most important thing is to keep children in touch with their family. They need to understand where they come from and experience love—they need love! Healthy, beautiful, love-filled family interactions were destroyed or attacked in the child welfare/residential school experience.... All parents sang to their children. Each child had a special song that was their song.... I'd walk into the house and my mom would be there and would start singing my song to me. She did this even when I was older. That's how we got nicknames.... They would always come from your song. We never called each other by our given names.[illegible]

The loss of culture and family relationships continues to reverberate, and poses challenges for today's child welfare system.

Métis children and child welfare

Richard Cardinal was seventeen years old when he hanged himself in 1984. From the age of four until his death, this Métis boy lived in twenty-eight different child welfare placements across Alberta, including sixteen foster homes and twelve group homes, shelters, and locked facilities.[illegible] His diary documents his experience and his deep longing to be reunited with his family: "I kept telling myself that this was all a bad dream that I would wake up soon with Charlie and Linda and the rest of my family in our home in Fort Chipewyan but in reality I knew that I wouldn't wake and that this was real and not just a bad dream."[224] His tragic story brought public attention to the experience of many Aboriginal children in foster care.

Researcher Deborah Canada found that the Sixties Scoop had a profound impact on Métis in Manitoba, where "between 1971 and 1981, 70% to 80% of Manitoba's First Nation and Métis adoptions were made into non-Native homes."[225] Robert Doucette was a Sixties Scoop child. He recalled being told that his *mooshum* (grandfather), who attended residential school, was "quite mad" when Doucette was taken away at only four months old. His mooshum "was throwing rocks at the car and swearing at them in all the languages that he knew he could speak, Michif, Cree, Dene, French and English. I think he probably swore at them in each language, but he was powerless to stop them."

Doucette was adopted into a family with five other Métis foster children. His foster father had to fight with the school in Prince Albert to allow him to use his birth name of Doucette. He faced much racism in Prince Albert. Despite being an excellent hockey player who was offered a tryout with a Junior A team, he turned to individual sports like track and field where he had more control over how he was treated. Doucette recalled how he was "a brown white guy" until he began to study his culture as an adult. His sister in his foster home was not as lucky and took her own life while in a penitentiary in Kingston, Ontario. He recalled "how sad" it was that her birth father only saw his daughter when she was born and when she was buried.

Doucette told the Commission, "We have to deal with our own internal racism amongst ourselves, because there are a lot of people from the Sixties Scoop that are trying to make their way back, that are being abused by our own people, because they just don't want to believe that they are who they say they are."[226]

As is the case with the number of Métis children in child welfare, the number of Métis children adopted out in the Sixties Scoop can only be estimated. Reliable numbers are not available because Métis identity is inconsistently recorded. Métis children may not self-identify or even be aware of their Métis heritage. A lack of knowledge and training leads some social workers to misidentify Métis children as Aboriginal. Estimates of the number of Métis children in care are likely conservative and researchers are often unable to track the progress and outcomes of Métis children involved with child and family services.[227]

The First Nations Component of the Canadian Incidence Study of Reported Child Abuse and Neglect was not able to generate separate estimates of Métis child maltreatment investigations because there were not enough investigations of Métis children in the data to be statistically reliable.[228] Data is likewise scarce provincially. In British Columbia, the Ministry of Children and Family Development reported that of the 4,642 Aboriginal children in care in 2009, just over 650 (14%) were identified as Métis.[229] The provincial auditor in Manitoba reported an increase in the number of Métis children in care between the fiscal year 2009–10 and 2010–11, from 797 to 908.[230] But this appears to be the extent of concrete information. Clearly, there is a gaping hole in terms of knowledge about the experience of Métis children and child welfare; accurate and up-to-date research is vitally needed.

Jurisdiction for providing services to Métis children

Without information, the distinct needs of Métis families cannot be met. A pan-Aboriginal approach is not appropriate. A Métis child's identity development "can be compromised in cross-cultural care if they are immersed in the dominant culture."[231] Métis peoples have traditional concepts of connectedness and kinship relationships that can form the basis for positive and effective child welfare interventions. Culturally appropriate supports from extended family can permit children to remain in their homes and communities.[232]

The development of Métis-specific child welfare institutions is in its infancy. The federal government does not provide funding for these services, taking the position that it is not responsible for Métis peoples, or indeed for any Aboriginal peoples who do not live on reserves. The government fought for twelve years to stop litigation aimed at obtaining a legal ruling on federal jurisdictional obligations with respect to Métis and "non-status Indians." In April 2014, the Federal Court of Appeal ruled in *Daniels v. Canada* that Métis are included as "Indians" within the meaning of the *Constitution Act, 1867*, which would mean that the federal government does indeed bear responsibility for Métis peoples.[233] The Federal Court of Appeal dismissed a lower court's finding that "non-status Indians" also fall within federal jurisdiction.[234] Both sides have appealed to the Supreme Court. It is anticipated that the Supreme Court will hear the case in 2015.[235] In the meantime, Métis children rely upon provincial child welfare agencies that, for the most part, are not designed to meet their unique needs.

There are some exceptions. The most developed Métis child welfare system is in Manitoba, where the first Métis child and family service agency in Canada was opened in 2000 as a result of an agreement between the province and the Manitoba Metis Federation.[236] Today, Métis peoples in Manitoba requiring child and family services receive culturally appropriate services from the Métis Child and Family Services Authority, delivered by the Métis Child, Family and Community Services and the Michif Child and Family Services Agency. The creation of this Métis-specific child welfare authority may lead to the more accurate identification of Métis children in care over time.

In Alberta, the province funds municipalities as well as Métis settlements for Métis child welfare services,[237] such as the Metis Child and Family Services Society in Edmonton and the Métis Calgary Family Services Society. In British Columbia, five Métis child and family service agencies deliver services while a non-profit organization, the Métis Commission for Children and Families, consults with the provincial government.[238]

Little progress has been made in Ontario, but the Métis Nation of Ontario has made recommendations to the provincial government to better adapt child welfare laws to the needs of its community. The Nation has recommended amendments to the *Child and Family Services Act* to allow for Métis-run child and family services. It has also suggested changes to the collection of data to identify Métis children in care, and better training for social workers to work effectively and respectfully with Métis families. As of spring 2015, these recommendations have not been implemented.[239]

Inequitable access to the kinds of health and healing services that can prevent the need for child welfare interventions further undermines the effectiveness of child welfare services. Health disparities, high unemployment, inadequate housing, and educational issues need to be addressed to ensure that Métis children have the best chance for a happy and healthy life.[240]

Métis Elder Leanne Laberge from British Columbia stressed the importance of taking every opportunity to take the Métis spirit into spaces where Métis people need to be represented.[241] In spite of the geographical differences of Métis peoples in Canada, Métis peoples are an extended family. In upholding the extended family, the role of Métis women will be critical, since "women are the teachers" who keep family information, stories, inspire the work ethic, and "look after the spiritual needs and knowledge of the family."[242]

Métis who were involved with residential schools or the child welfare system will need supports to ensure that they can reconnect with their traditions and "to recover what has been stolen in terms of their family stories, their cultural identity, and their ancestral pride."[243] It is not only the children taken who require such supports—the parents, extended families, and communities have also suffered.

The Government of Canada should not let unresolved jurisdictional disputes stand in the way accepting its responsibilities. Helping Métis people reconnect with their ancestral ties "means helping families to find and reconnect with those who have been taken, those lost in the foster care system, those taken to Europe by adoption, those lying in unmarked graves away from home."[244]

Addressing the child welfare crisis

Child welfare institutions in Canada are failing First Nations, Métis, and Inuit children. All of these groups are being disproportionately investigated and then placed in child welfare care. Many of the conditions that result in disproportionate Aboriginal involvement in the child welfare system are related to the intractable legacies of residential schools including poverty, addictions, and domestic and sexual violence.

Mary Anne Clarke was married to a residential school Survivor. She told the Commission that she worries that child and family services are

> carrying on some of the same tragedies that kids[went]through [in]the residential schools. I'm a [Child and Family Services] worker myself, and I know what it's like to be in a position to apprehend children. But there's got to be a better way than having the community decimated by it. There's got to be a way to keep, strengthen the community, putting the supports and services that they need so that they don't get removed from the community.

She suggests that we move away from "band-aid solutions" and learn from the experience of the residential schools:

> If anything that the school situation has taught us, it's to listen. And I think we need to do the same for the ones who are victims of [Child and Family Services]. And I say victims. I know [Child and Family Services] has helped some people, I'm not saying that, but there's a lot of victims out there, too. And the system is not adequate. And if we listen to the people who have been affected, I do believe we find our answers.[245]

Child apprehension is not a step that child welfare officials take lightly. Yet, for most agencies, it is the only means they have to be funded for providing services. More resources devoted to a wide range of services could help prevent the need for critical interventions. As residential school Survivor Shirley Morris told the Commission, "You look at all these kind of problems and you see even some of our child services like an extension of the residential school system. How they're taking our children away instead of working with the parents and offering them help, and maybe even respite care. Because of the stress, they never learned to be parents, especially when they're having kids [at] sixteen, seventeen, eighteen. They don't know how to look after kids."[246]

Important steps have been taken to shift control over Aboriginal child welfare to Aboriginal peoples. But without the necessary funding and tools, Aboriginal child welfare agencies have been unable to significantly reduce the number of children in out-of-home care. More Aboriginal children continue to be placed in foster care each year than attended residential school in any one year. This is the most compelling evidence of the harmful and continuing legacy of residential schools.

The governments of Canada will need to address Aboriginal child poverty, including matters of housing, water, sanitation, food security, family violence, addictions, and education inequities and outcomes. Child welfare reform is essential, and the crisis of Aboriginal overrepresentation in child welfare cannot be addressed without interventions that also target its contributing causes.

Lessons from the US *Indian Child Welfare Act*

The United States experienced a similar crisis of dramatic overrepresentation of Aboriginal children in care. Congress enacted the *Indian Child Welfare Act* in 1978 in response. Four years of hearings confirmed that "many state and county social service agencies and workers, with the approval and backing of many state courts and some federal Bureau of Indian Affairs officials, had engaged in the systematic, automatic, and across-the-board removal of Indian children from Indian families and into non-Indian families and communities."[247] Between 25% and 35% of all Indigenous children were removed from their families. About 90% were placed in non-Indigenous homes.[248]

Professor Lorie M. Graham wrote that the legislative studies and hearings leading to the passage of the Act "revealed how deeply ingrained the assimilative attitudes of the past had become in our society. The cultural values and social norms of Native American families—particularly indigenous child-rearing practices—were viewed institutionally as the antithesis of a modern-day 'civilized' society."[249] Professor Graham explained how the Act attempted to counter those attitudes and affirm the legitimacy and the importance of Indigenous families. She recognized that "no law could dictate a change in the attitudes of social workers, educators and judges regarding indigenous culture." However, a law could "minimize the effects of those lingering attitudes by setting minimum standards and procedures for the future placement of Native American children outside the home."[250]

The American law now in force governs any custody proceeding involving the termination of parental rights, the implementation of foster care, or the adoption of a Native American child. Tribal courts have exclusive jurisdiction over custody proceedings involving Native American children living on a reservation. Tribal courts also have concurrent and presumptive jurisdiction over child custody cases where the child lives outside of a reservation.[251]

Where a state court has jurisdiction over a case involving an Indigenous child, the Act provides for minimum procedural guarantees, including notice to both the parents and the Indian tribe if a state agency is petitioning for foster care or the termination of parent rights. Parents have the right to court-appointed counsel. State agencies have to prove "beyond a reasonable doubt ... that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child," which is a higher standard than that applied in custody proceedings involving non-Indigenous children.[252] The state agency must also call the testimony of "qualified expert witnesses" before parental rights can be terminated. To be qualified, the expert must have "particularized knowledge regarding Indian culture."[253]

If the court orders a placement, it must give preference to the Indian child's extended family or, failing that, another tribal community placement.[254] Child welfare agencies must prove that "active efforts" have been made to prevent the breakup of the family before a court can order foster care or termination of parental rights.[255]

The system in the United States is far from perfect. Critics have argued that state courts have simply used creative legal arguments to get around the provisions of the Act.[256] In 2013, three families and two tribes, the Oglala Sioux and the Rosebud Sioux, filed a class action lawsuit alleging that the State of Minnesota had repeatedly removed children from their homes without due process.[257] As in Canada, high rates of poverty, unemployment, crime, and substance use have contributed to the apprehension of Indigenous children, and even a reformed child welfare system can do little to alleviate these problems.[258]

Nonetheless, after thirty years, the *Indian Child Welfare Act* has achieved a number of positive results, including greater tribal authority over the placement of Indigenous children as well as the expansion of family preservation programs. Indigenous children are still removed from their homes in disproportionately high numbers, but the rate of overrepresentation has decreased. The rate of placement with non-Indigenous caregivers has also decreased.[259]

A number of Canadian jurisdictions have similar presumptions built into their legislation, such as the need to respect the integrity of Aboriginal families, the importance of cultural continuity, and the benefits of kinship care. However, the American model has one key difference: it places judicial control over child welfare in the hands of tribal courts.

To begin to address the national Aboriginal child welfare crisis, reform is essential. A key part of that reform is greater consistency in the regulatory framework that guides the work of child welfare authorities. That framework must acknowledge the central role of Aboriginal agencies in decision making about child welfare matters. As Aboriginal justice systems evolve, they too will come to play a part in determining child apprehension and custody matters. Establishing national standards is the first step towards developing greater consistency in decision making and ensuring that overrepresentation is reduced and that culturally appropriate placements become the norm.

4) We call upon the federal government to enact Aboriginal child welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:
    i. Affirm the right of Aboriginal governments to establish and maintain their own child welfare agencies.
    ii. Require all child welfare agencies and courts to take into account in their decision making the residential school legacy.
    iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.

The Touchstones of Hope approach to child welfare reform

In October 2005, Cindy Blackstock and colleagues presented a report titled *Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth and Families* to an audience at Reconciliation: Looking Back, Reaching Forward—Indigenous Peoples and Child Welfare, a conference held in Niagara Falls, Ontario. The report provides some helpful guidelines to consider in approaching child welfare reform:

- Recognize the past, and current, multigenerational and multidimensional impacts of colonization on Indigenous children, youth, and families;
- Honour those who suffered the loss of their family relationships and identities as a consequence of child welfare decisions, and those who have kept family relationships strong despite all odds;
- Respect those who have worked, and continue to work, to build and develop culturally based services and policies;
- Affirm that all Indigenous children and youth have the right to family (nuclear and extended), safety, and well-being, and to be able to identify with, and thrive as, a member of their culture of origin.

Further, it is expected that the path to reconciliation in child welfare will

- Acknowledge the mistakes of the past, and establish a child welfare profession based on non-discriminatory values, social justice, and fundamental human rights;

- Set a foundation of open communication that affirms and supports Indigenous families and communities as the best caregivers for Indigenous children and youth;
- Respect the intrinsic right of Indigenous children, youth, and families to define their own cultural identity;
- Improve the quality of, and access to, services for all children, youth, and families to live the potential of each person;
- Build a united and mutually respectful system of child welfare capable of responding to the needs of all children and youth;
- Strengthen the ability of the child welfare profession to learn, ensuring past mistakes do not become tomorrow's destiny.[illegible]

The document sets out five principles (self-determination, holistic response, respect for culture and language, structural interventions, and non-discrimination), framed within a four-phase process of reconciliation (truth telling, acknowledging, restoring, and relating). It includes tools to assist Aboriginal communities to clearly document their vision of healthy children and families and to work with Aboriginal and non-Aboriginal community members, professionals, and other stakeholders to implement the measures needed to achieve that vision. Touchstones of Hope seeks to stimulate a process for community-specific, community-driven plans for child safety. However, communities must have the resources and powers necessary to implement their own creative community solutions to the child welfare crisis.[illegible]

An independent evaluation of the implementation of the Touchstones of Hope principles in Northern British Columbia suggests that it has been very effective in shifting the relationship between First Nations and mainstream child welfare providers to one based on a shared vision and a commitment to better support First Nation families.[illegible]

Promising program innovations

A number of promising and innovative Canadian programs have been developed. They are subject to Aboriginal control and inspired by First Nations wisdom and practices.

Nishnawbe-Aski's Talking Together Program

Nishnawbe-Aski Legal Services in Thunder Bay, Ontario, launched the Talking Together Program (TTP) in 2001 as an alternative to court proceedings in child protection matters. Talking circles bring together families, social service workers, and Elders to explore creative solutions in a non-judgmental environment. Their solutions are then implemented as the plan of care for the child.

The participation of families and community members is the cornerstone of the program. Rather than the usual, often ineffective addiction and anger management treatment options, TTP allows for more innovative solutions for the care of children.

In 2005, 135 children remained in their home communities following involvement with TTP. The next year even more, 218, remained in their community.[illegible] In some areas, TTP has been so effective that it has evolved into a prevention program rather than a crisis intervention service. This means the program is able to address concerns early so that child protection services do not have to become involved.

Manitoba's Mooswanyibaan Minisiwin First Nations Family Justice Program

The Mooswanyibaan Minisiwin First Nations Family Justice Program in Manitoba was developed by a mandated Aboriginal child protection agency. The program brings families, community members, and service providers together to achieve long-term protection of children by getting at the roots of the family's concerns. The process is based on Aboriginal traditions of peacemaking, and all participants must be fully informed volunteers. Since 2000, the program has served approximately two hundred families each year.

A 2004 evaluation indicated very high levels of participant satisfaction. Participants said that their voices were heard, there was positive and open communication, and it was a safe and comfortable environment for families. The evaluation found that "95% of referring agents stated that the program was valuable to their First Nation community."[illegible]

Aboriginal Legal Services of Toronto's Giiwedin Anang Council

This talking circle program involves volunteers from Toronto's Aboriginal community, including an Elder and an auntie for each talking circle. The talking circle may also include a representative from the child's community. The program provides a safe and culturally relevant place for families, children, and child welfare officials to come together to develop a plan that will meet the needs of the child.

Talking circles can take place before or after apprehension. After apprehension, the program requires the consent of at least one parent as well as Native Child and Family Services of Toronto, the mandated child protection agency for Aboriginal families in Toronto. Children over twelve years of age may participate in the talking circle. An [illegible] from the council will also meet with the child and represent the child's interests in the circle.

A council hearing cannot usurp the role of the courts in determining the best interests of the child. However, a council hearing may arrive at a plan for the child more quickly, and with greater participation from the parties.

[illegible]

> [illegible]

[illegible] more people to be involved in the safekeeping of children in their communities. [illegible] While the Council decisions are made by a collective, so the sense of responsibility is [illegible]

Another recent innovative approach to child protection cases is one that has been used with Indigenous families in Australia called the Signs of Safety approach.[illegible] Signs of Safety is a child protection model that focuses on partnerships with parents and children to stabilize and strengthen families. Some Aboriginal agencies in Manitoba have started studying this approach to see whether it might be useful in a Manitoba context.

A move toward more community participation in child welfare matters and programs that draw on Aboriginal traditions and wisdom is encouraging. However, although Aboriginal programs may be better able to draw on kinship and community resources than court-based child welfare proceedings, it is important to recognize that most Aboriginal communities have limited resources. Such programs are resource intensive and require stable funding. Like all programs involving children, they should also be carefully evaluated.

Community programs are important and inspiring, but the ultimate solution to the child welfare crisis must lie in better child welfare decision making and culturally appropriate support of families, together with broader reforms to address poverty,

[illegible]

Conclusion

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CHAPTER 2

The failure to educate

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Introduction

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The long reach of the [illegible] [illegible]: [illegible] and the [illegible] gap

[illegible]

A history of inadequate education

As educational institutions, residential schools were failures, and regularly judged as such. In 1923, former Regina industrial school principal R. B. Heron delivered a paper to a meeting of the Regina Presbytery of the Presbyterian Church that was highly critical of the residential school system. He said that parents generally were anxious to have their children educated, but they complained that their children "are not kept regularly in the class-room; that they are kept out at work that produces revenue for the School; that when they return to the Reserves they have not enough education to enable them to transact ordinary business—scarcely enough to enable them to write a legible letter."[8] The schools' success rate did not improve. From 1940–41 to 1959–60, 41.3% of each year's residential school Grade One enrolment was not promoted to Grade Two.[9] Just over half of those who were in Grade Two would get to Grade Six.[10]

Much of what went on in the classroom was simply repetitious drill. A 1915 report on the Roman Catholic school on the Blood Reserve in Alberta noted, "The children's work was merely memory work and did not appear to be developing any deductive power, altogether too parrot like and lacking expression."[11] A 1932 inspector's report from the Grayson, Saskatchewan, school suggests there had been little change: "The teaching as I saw it today was merely a question of memorizing and repeating a mass of, to the children, 'meaningless' facts."[12]

In the minds of some principals, religious training was the most valuable training the schools provided. In 1903, Brandon, Manitoba, principal T. Ferrier wrote that "while it is very important that the Indian child should be educated, it is of more importance that he should build up a good clean character." Such a heavy emphasis was required, in Ferrier's opinion, to "counteract the evil tendencies of the Indian nature."[13] The staff handbook for the Presbyterian school in Kenora in the 1940s stated it was expected that, upon leaving the school, most students would "return to the Indian Reserves from which they had come." Given this future, staff members were told that "the best preparation we can give them is to teach them the Christian way of life."[14]

Before the Second World War, many schools followed a system that saw the children doing farm and domestic work for half of each day. This work schedule significantly limited their classroom and study time.

When the students were in school, the classrooms were often severely overcrowded. At the Qu'Appelle school in 1911, Sister McGurk had seventy-five girls in her junior classroom. The inspector of Roman Catholic schools reported to Ottawa that this was an "almost impossible" situation.[15] In 1915, two teachers were responsible for 120 students at the Coqualeetza Institute in Chilliwack, British Columbia.[16] In 1920, there were sixty students in the junior classroom at the Port Alberni, British Columbia, school.[17]

The Indian Affairs schools branch maintained that the principals and the staff were "appointed by the church authorities, subject to the approval of the Department as to qualifications."[18] In reality, the churches hired staff and the government then automatically approved their selections.[19] The churches placed a greater priority on religious commitment than on teaching ability.[20] Because the pay was so low, many of the teachers lacked any qualification to teach.[21] In 1908, Indian Affairs inspector F. H. Paget reported that, at the Battleford school, "frequent changes in the staff at this school has not been to its advantage." The problem lay not with the principal, but with the fact that "more profitable employment is available in the District and, furthermore, the salaries paid are not as high as are paid in other public institutions."[22] When a British Columbia Indian agent recommended that schools be required to hire only qualified staff, he was told by his superior, British Columbia Indian Superintendent A. W. Vowell, that such a requirement would result in the churches' applying for "larger grants." And, as Vowell understood it, Indian Affairs "is not at present disposed to entertain requests for increased grants to Indian boarding and industrial schools."[23] In 1955, 55 (23%) of the 241 teachers in residential schools directly employed by Indian Affairs had no teacher's certificate.[24] In 1969, Indian Affairs reported it was still paying its teachers less than they could make in provincial schools. "As a result, there are about the same number of unqualified teachers, some 140, in federal schools [residential and non-residential] now, as ten years ago."[25]

Since the 1920s, Indian Affairs required residential schools to adopt provincial curricula.[26] The department also asked provincial governments to have their school inspectors inspect Indian Affairs schools.[27] The wisdom of this practice had been questioned during the hearings of the Special Joint Committee of the Senate and House of Commons inquiry into the *Indian Act* in the 1940s. Andrew Moore, a secondary school inspector for the Province of Manitoba, told the committee members that Indian Affairs took full responsibility for all aspects of First Nations education, including curriculum.[28] He said provincial education departments, including the one he worked for, were "not organized or not interested in Indian schools."[29]

The decision to leave curriculum to provincial education departments meant that Aboriginal students were subjected to an education that demeaned their history, ignored their current situation, and did not even recognize them or their families as citizens. This was one of the reasons for the growing Aboriginal hostility to the Indian Affairs integration policy. An examination of the treatment of Aboriginal people in provincially approved textbooks reveals a serious and deep-rooted problem. In response to a 1956 recommendation that textbooks be developed that were relevant to Aboriginal students, Indian Affairs official R. F. Davey commented, "The preparation of school texts is an extremely difficult matter." It was his opinion that "there are other needs which can be met more easily and should be undertaken first."[30] In the following years, assessments of public-school textbooks showed that they continued to perpetuate racist stereotypes of Aboriginal people.[31] A 1968 survey pointed out that in some books, the word *squaw* was being used to describe Aboriginal women, and the word *redskins* used to describe Aboriginal people.[32]

Despite the many challenges they faced, some of the children of the residential schools were able to enjoy subsequent success, sometimes as teachers or missionaries themselves. However, many left the schools without adequate skills and with an aversion to education. Myrna Kaminawaish went to the Fort Alexander residential school. She remarked, "Learning became very hard for me because I associated learning with being beat or, you know. So learning was very terrifying for me."[33] As a result, she attained only a Grade-Three education.

Paul Kaludjau attended school in Chesterfield Inlet on the Hudson Bay coast. He recalled how his father used to call him and his fellow students "educated bums" because, as he said,

> I knew nothing about survival on the land, because everybody was dependent on harvesting from the land and everything else. And during that time when we went to school, when we learned how to speak English, it labeled us as a little bit separate from the family now, because we knew something they didn't know in the speaking of the language.... You weren't close to the community anymore because you were not a skilled hunter anymore.[34]

As with many of the residential school students, Kaludjau's experience only strengthened his commitment to his family's ways of living: "I tried really hard to become that skillful hunter after that, and because someone was labeling you as a not very skillful hunter because of your education. But for me, that made me more aggressive in trying to make sure that I lived up to their expectations, and it helped me more to become stronger myself."

Walter Russell Jones attended the Port Alberni residential school. He recalled a student there asking,

> "Can I go to grade 12?" And that supervisor said, "You don't need to go that far," he says. He says, "Your people are never going to get education to be a professional worker, and it doesn't matter what lawyer, or doctor, or electrician, or anything, that a person has to go to school for." He says, "You're going to be working jobs that the white man don't want to do."[35]

Too often the residential school system is regarded as a relic of the past. However, the last residential school closed in the mid-1990s. Forty-seven per cent of on-reserve residents between the ages of fifty and fifty-nine attended residential schools.[36] The Northern territories have the largest proportion of children whose parents attended residential schools (38%).[37]

A legacy of abuse

In 1895, when commenting on the physical abuse of students by the staff of the Red Deer school, Indian agent D. L. Clink noted the disciplinary measures used by one teacher "would not be tolerated in a white school for a single day in any part of Canada."[38] In the coming years, others would comment on the excessive discipline employed in the schools.[39] Despite this, Indian Affairs failed to develop and implement comprehensive and consistent directives, and to monitor for effective and appropriate discipline. By so doing, it sent the message that there were no real limits or consequences to what could be done to Aboriginal children within the walls of a residential school.

In their mission to 'civilize' and Christianize, the school staff relied on corporal punishment to discipline their students. That punishment often crossed the line into physical abuse. Although it is employed much less frequently now, corporal punishment is still legally permissible in schools and elsewhere under Canadian law. Section 43 of the *Criminal Code* reads, "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances." The Commission believes that corporal punishment is a relic of a discredited past and has no place in Canadian schools or homes.

6) We call upon the Government of Canada to repeal section 43 of the *Criminal Code of Canada.*

The abuse that characterized life at the schools was not conducive to learning anything other than fear and self-hatred. Patricia Brooks recalled that at the Shubenacadie, Nova Scotia, residential school, "the way the teachers spoke to us every day, that we weren't even native, we were just like, they were talking about somebody else; so you'd just kind of disassociated yourself from the fact that the native people, it was you. But they never said anything encouraging about native people."[40] Thus, many students left the school filled with self-loathing and loathing of their own family and community. They also often left with a profound distrust of education.

Successes and failures

Most students left residential schools as soon as they could. A 2010 study of Aboriginal parents and children living off reserve found that among those who did not complete high school, 36% had attended residential school, while 28% had not.[41] Only 7% of the parents who attended residential school obtained a university degree, compared to 10% for those Aboriginal parents who had never attended these institutions.[42]

These findings are consistent with findings of a random sample of 203 files pulled from the Independent Assessment Process (IAP), a dispute resolution process that is available to those who suffered sexual or severe physical abuse at residential school. Twenty-three per cent of the claimants in the sample did not identify any specific level of school completion, suggesting a low level of achievement. Of those reporting a level of educational attainment, 13% said they attained less than a Grade-Seven education, 28% attained Grade Seven to Nine, 28% completed Grade Ten to Twelve, and 11% received a GED (a high school equivalency diploma).[43] According to the 2011 National Household Survey, among Aboriginal people aged 25 to 64, 28.9% had "no certificate, diploma or degree," while the proportion for non-Aboriginal people in the same age group was 12.1%.[44] The residential school Survivors in the IAP sample appear to have completed high school at a much lower rate than the national averages for both Aboriginal and non-Aboriginal people generally.

Only 20% of the former residential school students captured by the IAP study had completed a college certificate/diploma or university degree. This level of post-secondary education is far below the educational attainment amongst Aboriginal people generally (48.4%) and even further below the non-Aboriginal population (64.7%).[45]

Some students, however, were able to succeed despite their negative experiences at residential school. Violet Rupp failed Grade Nine at the Assiniboia residential school after she had been sexually assaulted by a staff member. She explained to the Commission,

> I always had to watch my back 'cause I'd see him once in awhile and he'd be look, staring at me, you know, just be avoiding him all over the place, all over the residence. I was scared to meet him in the hallways; I was scared to go out, out of my dorm. I was scared that, you know, he might try to do something worse; but I didn't tell anyone because I felt ashamed and I was afraid. And I was afraid that nobody would believe me.... But after that though I, I had that determination to be strong and just to continue. I wanted to prove myself that I can, I can succeed even though, you know, I was violated. And I went on, went on. I went to university. I have, I went on and got married, I have four children. And it seems to me I'm always, you know, making my sure my girls are, you know, are ok. I'm always phoning them, asking them if they're ok. So I just, you know went, went to school and got my Bachelor of Education degrees, my two Master's degrees; I never gave up.[46]

Esther Lachinette-Diabo became a teacher after attending the Spanish residential school. She noted,

> I'm thankful that I was in there, in the school, in that system because I did become educated.... The boarding school used to have public speaking contests, and so I aspired to become a public speaker. I've learned to speak English really,

> *really well, and I learned to speak loud and clear. So, I think that part that I did* receive an education. But as far as family connections, that was all lost.[47]

The income gap

The failures of the residential school system had an impact well beyond the childhood of the students. It adversely affected the kinds of jobs and earnings they could obtain as adults. Darryl Siah, attended residential school in Mission, BC. He was homeless when he provided the Commission with his statement in May 2011. He told the Commission how he valued education but became uncomfortable with it as a result of his experiences at residential schools:

> And as long as you ... do your homework and stuff, and you'll get a real good education, and ... make something out of yourself. You'll be a lawyer or a doctor, or nurse, or you name it, you can do it if you always go right through the whole school, right. Now, I probably could have been something, too, if I went all the way. I didn't want to. I didn't feel comfortable being there.[48]

In the sample of IAP claimants, 55% reported working as "physical labourers," followed by 56% who identified as "casual workers."[49] The IAP statistics reflect a far greater reliance on "lower-skilled" labour than the Canadian labour market as a whole. According to the 2011 National Household Survey, only 11% of Canadian workers are employed in jobs that do not require secondary school completion or higher.[50]

The residential school litigation and subsequent settlement did little to address these aspects of the residential school legacy. The Common Experience Payments went to individuals, not communities. Although there was a promise that any residual amounts could later be allocated to educational purposes, the settlement has done little to overcome the educational barriers that the children and grandchildren of residential school Survivors still face. Their lives have also been impacted by the poor education experienced by their parents and the resulting high levels of poverty and family breakdown. As a result, poor educational attainment, low rates of employment, and high rates of poverty persist as the continuing legacies of residential schools for this next generation.

It should be noted that while successful IAP applicants have been awarded on average $115,000, this is compensation for the sexual and serious physical abuse they endured. It is not compensation for the poor education they received and its related loss of economic opportunity.

The intergenerational impact

The barriers that residential school Survivors faced after leaving school have had serious repercussions for their children. Factors such as parents' educational levels and household income are powerful predictors of the school success of their children.[51]

While there are few studies that focus specifically on the children of residential school Survivors, some data is starting to be gathered. One study found that on-reserve First Nations youth aged twelve to seventeen are more likely to report having learning problems at school and having had to repeat a grade if one or both of their parents attended residential school.[52]

Another study found that Aboriginal children living off reserve whose parents attended residential school are less likely to be doing well at school, compared to Aboriginal children whose parents did not attend these institutions.[53] In addition, former residential school students are less likely to have incomes in the highest 20%, and are more likely to report experiencing food insecurity. All three of these factors—parental residential school experience, household income level, and food security—combine to impede success in school for their children.[54]

The study also found that students who spoke an Aboriginal language at school were more likely to be doing well in school, a further indication that the denial of language rights at residential schools contributed to difficulty in school for the children of Survivors.[55]

While secondary and post-secondary graduation rates for Aboriginal people have improved since the closure of the schools, considerable gaps remain when compared to the non-Aboriginal population. The 2012 Aboriginal Peoples Survey showed that 72% of First Nations people living off reserve, 42% of Inuit, and 77% of Métis aged 18 to 44 had a high school diploma or equivalent. These figures are similar to those from the 2006 Aboriginal Peoples Survey. In comparison, the 2011 National Household Survey revealed that 89% of the non-Aboriginal population had at least a high school diploma.[56]

The result is that access to post-secondary education is not an option for the majority of Inuit young people or for First Nations youth living on reserve.[57] In 2006, only 2.9% of First Nations people living on reserve had completed a university education, compared to 18.1% of the general Canadian population.[58] The federal auditor general commented, "In 2004, we noted that at existing rates, it would take 28 years for First Nations communities to reach the national average. More recent trends suggest that the time needed may be still longer."[59] Given the youthful demographics of Aboriginal communities, there is an urgent need for change.

According to the 2012 Aboriginal Peoples Survey, 43% of off-reserve First Nations people, 26% of Inuit, and 47% of Métis aged 18 to 44 had post-secondary credentials (i.e., a certificate, diploma, or degree above the high school level). According to the National Household Survey, the corresponding figure for the non-Aboriginal population in 2011 was 64%.[52]

Most of the gains in high school completion rates have been led by Aboriginal women.[53] Completion rates at the secondary level are higher for Aboriginal women than for Aboriginal men, although they are still below the Canadian average.[54] Again, it is young Aboriginal women who are driving most of the increases in Aboriginal post-secondary attendance.[55] More research is needed to explain the achievement gaps between Aboriginal men and women.

The connection between residential schools and lower than average educational and economic attainments is particularly evident in data that shows that residential school Survivors have less income than other Aboriginal people, and that their children have more difficulty in school.

Aboriginal people have a lower median after-tax income; are more likely to experience unemployment; and are more likely to collect employment insurance and social assistance.[56] In 2010, the employment participation rate for Aboriginal workers was 75% compared with 86.7% for their non-Aboriginal counterparts. This 11.7 percentage-point gap reflects an increase in the disparity between Aboriginal and non-Aboriginal workers over the course of the economic downturn that began in 2008.[57] These statistics cover all Aboriginal groups, with their own variations.

Aboriginal people also have earnings well below their non-Aboriginal counterparts. The median income for Aboriginal peoples in 2006 was 30% lower than the median income for non-Aboriginal workers ($18,962 vs. $27,097).[58] Earnings are highly influenced by educational attainment. Aboriginal adults aged 18 to 44 who have finished high school are more likely to be employed than those who did not have a diploma. Among off-reserve First Nations people, 72% who finished high school were employed, while only 47% of those who did not finish had jobs. Among Inuit, 71% who completed high school were employed, while 44% of those who did not finish had jobs. For Métis, the figures were 80% versus 61%. While men in the general population usually have higher rates of employment than women, this was not the case among First Nations people living off reserve, Inuit, and Métis who had completed high school. For all three groups, female completers were as likely to be employed as their male counterparts. In terms of earnings, among First Nations people living off reserve and Métis, the median employment income ranges for completers were $10,000 higher than for leavers. Among Inuit, the difference in median employment income between completers and leavers was $20,000.[59]

The income gap between Aboriginal and non-Aboriginal people closes almost completely when Aboriginal people attain a university diploma, which, as noted above, they do at a far lower rate.[60]

Not surprisingly, the child poverty rate for Aboriginal children is very high—40%, compared to 17% for all children in Canada.[illegible] These statistics cannot be explained away simply on the basis that many Aboriginal people live in rural communities. These children are living with the economic and educational legacy of the residential schools.

Aboriginal Canadians earn less than non-Aboriginal workers regardless of whether they work on or off reserve, in urban, rural, or remote locations.[illegible] The proportion of Aboriginal adults living below the poverty line[illegible] is also much higher than those of non-Aboriginal adults, with differences ranging from 7.8% for adult men aged 65 or older, to 22.3% for adult women aged 65 or more. The depth of poverty is also much greater, with Aboriginal people having an average income that's further below the poverty line on average than that of non-Aboriginal adults.[illegible]

Even with the opportunities that flow from Aboriginal rights settlements, many Aboriginal adults are not fully able to take advantage of those benefits. For example, with land rights negotiations finalized in the four northern Inuit regions, residents are increasingly looking for opportunities to work within government to implement those final agreements. The Government of Nunavut has stated a goal of hiring beneficiaries of the Nunavut Land Claim Agreement (Inuit peoples) to match their proportion of the total Nunavut population. However, while in 2007, Inuit made up 85% of the Nunavut population, they comprised only 50% of the total public service workforce with the majority of those (92%) employed in administrative support positions. The majority of the higher paying positions were filled by non-Inuit workers.[illegible] Former Justice Thomas Berger, in his 2006 evaluation report on the implementation of the Nunavut Land Claims Agreement, noted that Inuit employment in the government of Nunavut was "achieved early on, and has not been improved upon for the simple reason that only a few Inuit are qualified for the executive, management and professional positions that make up the middle and upper echelons of the public service."[illegible]

Low education rates have an ongoing impact on the economic well-being of the North in general because of the social consequences associated with high unemployment, greater numbers of young people caught in the justice system, and more health-related issues linked to poverty.[illegible]

Aboriginal people also experience the feminization of poverty. Despite the fact that Aboriginal women are more likely to complete high school and attend post-secondary school, they report lower median household after-tax income than Aboriginal men.[illegible] Aboriginal women over the age of 65 are much more likely to live in poverty than Aboriginal men in the same age group (53.4% vs. 37.4%).[illegible] The unemployment rate for Aboriginal women was almost double that of non-Aboriginal women in 2006 (13.7% vs. 6.4%).[illegible] These markers all suggest a population suffering significant inequality and social exclusion.

The Treaties

Aboriginal peoples have always expressed a commitment to education for their children. Such hopes are reflected in the language of the early Treaties. For example, Treaties 1 and 2 included a commitment by "Her Majesty" to "maintain a school in each reserve hereby made, whenever the Indians of the reserve shall desire it." Treaty 6 reads as follows: "Her Majesty agrees to maintain schools for instruction in such reserves hereby made, as to her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it." Other Treaties, such as Treaty 10, protected the right to education by way of agreements to pay teachers' salaries. Thus, access to education was an essential element of the early Treaties, capturing a desire by First Nations to foster the capacity to adapt to the changing world.[illegible]

Although the federal government does provide basic educational funding for First Nations communities, promises made in the Treaties have never been fully kept.[illegible] Without control over their own education, the educational system has more often than not been alien to Aboriginal people, both within the residential school system, and in the public system.

International rights to education

The right to education is recognized in a number of international human rights documents, including the *International Covenant on Economic, Social and Cultural Rights* (article 13), the *Convention on the Rights of the Child* (articles 28 and 29), and the *United Nations Declaration on the Rights of Indigenous Peoples* (article 14). The right to fair wages, equal remuneration for work of equal value, social security, and an adequate standard of living are listed in the *International Covenant on Economic, Social and Cultural Rights* (see articles 6 to 11) and are also guaranteed in the *United Nations Declaration on the Rights of Indigenous Peoples* (article 17). The *International Covenant on Economic, Social and Cultural Rights* (articles 6 and 7) provides for the right to work, the opportunity to earn a living, and the right to just and favourable work conditions.

Fulfilling the promise of the *UN Declaration on the Rights of Indigenous Peoples* will be key to overcoming the legacy of the residential schools. The "expert mechanism" established by the UN to provide advice on the *Declaration on the Rights of Indigenous Peoples* observed that Indigenous peoples have been subjected to assimilative mainstream education systems that eroded traditional ways of life and languages, imposed foreign belief systems, and institutionalized discriminatory attitudes. In the face of these violations, "it is the responsibility of States to address and undo past wrongs to reform mainstream education systems."[illegible] Not only has a right to education been

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Australia's "Close the Gap" commitments

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Aboriginal education in crisis

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society," including "racist attitudes and behaviour."[illegible] RCAP recommended innovative approaches that could facilitate distance learning and keep children in their home communities.

Educating First Nations children on reserves

As the Senate Standing Committee on Aboriginal Peoples noted in 2011, "First Nations education is in crisis."[illegible] In some reserve communities, First Nations children do not even have an actual school building.[illegible]

There are approximately 72,000 students attending 518 First Nation schools.[illegible] Despite these numbers, many children must still leave their homes and families behind if they wish to obtain an education, particularly at the high school level. As was the case with many residential school students, some First Nations students do not return home from provincial schools. In Ontario, an inquest has been called to examine the deaths of seven First Nations students who died between 2000 and 2011 while boarding in Thunder Bay to attend high school.[illegible]

In 1969, Indian Affairs Minister Jean Chrétien introduced a white paper proposing an end to the *Indian Act* and an end to the special legal relationship between Aboriginal peoples and the Canadian state. He proposed it as an exercise in equality. However, Aboriginal leaders quickly rejected the document as an abrogation of their Treaty rights. The federal government withdrew the white paper and proclaimed its commitment to the concept of "Indian Control of Indian Education."[illegible]

However, the interpretation of 'Indian control' put forward by the Government of Canada bore little resemblance to the vision held by First Nations people. The government's version of Indian control meant the devolution of federal education programs to First Nations, without the benefit of adequate funding or statutory authority.[illegible] Indeed, when devolution began, it was designed to occur without any additional expense. This meant that schools, which were already substandard compared to provincial norms, were handed over to the First Nation bands to run, without giving the bands the means to operate them effectively. Authors Jerry Paquette and Gérald Fallon write,

> thrust into the world with no program or administrative infrastructure whatsoever, and no resources to create such infrastructure ... these communities found themselves completely alone and bereft of any means to develop the capacity to administer their schools coherently—much less in a way that would adapt provincial curricula to ensure "cultural continuity and development."[illegible]

Thus, devolution delivered nothing more than the illusion of control.

The Aboriginal scholar Andrea Bear Nicholas notes that local decisions are heavily constrained by the party holding the purse strings—the federal department of

Aboriginal Affairs and Northern Development. Most band-operated schools are forced to accept provincial curricula and assessment standards, teacher certification, and—with the exception of Québec and parts of the North—the use of English as the language of instruction.[110] As a result, the curriculum for the majority of First Nation schools is virtually identical to that found in the provincial and territorial schools.[111] Consequently, the current situation is not significantly different from the residential school era, when Aboriginal communities had no say in the content and language of their children's schooling.

As Verna Kirkness points out, the current system bears no relationship to traditional modes of teaching that taught

> knowledge necessary for daily living. Boys and girls were taught at an early age to observe and utilize, to cope with and respect their environment. Independence and self-reliance were valued concepts handed down to the young. Through observation and practice, children learned the art of hunting, trapping, fishing, farming, food gathering, child rearing, building shelters. They learned whatever their particular environment offered through experiential learning.[112]

The funding of First Nations schools was inadequate from the start. The formula under which they were funded was last updated in 1996, and does not take into account the range of basic and contemporary education components needed to deliver a quality education in the twenty-first century, such as information and communication technologies, sports and recreation, language proficiency, school operating costs, student data management systems, and library services.[113] Worse still, after 1996, funding increases for First Nation education were capped at 2% for nearly a decade.[114] The original 2% annual increase was initially put in place as an assurance that Aboriginal funding would be guaranteed 2% increases even while other government departments were being cut back drastically. However the 2% cap was retained even when increased spending in other government departments was permitted. In recent years, the modest growth in funding has been insufficient to keep pace with rising costs and the significant increases in the Aboriginal student population.[115]

There is a lack of information and transparency on the funding inequities that exist between federally and provincially funded schools. Even though Aboriginal Affairs has committed to funding a First Nation education system that is comparable to the provincial schools, an internal audit found that the department does not collect the information required to confirm whether or not this goal is being met. The collection of accurate, consistent, relevant, and accessible information is important if we are to measure and close gaps between Aboriginal and non-Aboriginal peoples that are in part a legacy of the residential schools.

A 2012 evaluation (commissioned by the federal government) found that Saskatchewan stood out as a province in which the provincial school boards receive significantly more funding per student (the actual difference was not identified in the report). In the other regions, evaluators with Aboriginal Affairs determined there was either no difference in funding, or that First Nation schools appeared to receive more than non-Aboriginal public schools.[116]

However, the Aboriginal Affairs consultants delved deeper, examining the funding provided to provincial school boards with fewer than 1,000 students—which are more directly comparable to First Nation schools. This comparison revealed a marked inequity in funding. For example, in Ontario, the smaller school boards receive approximately $17,000 per student, while First Nations schools receive under $10,000. In Québec, smaller school boards receive approximately $12,000 per student, while First Nation schools receive approximately $8,000. Manitoba was the only province in which funding per student for First Nations schools exceeded the funding per student for small provincial school boards.[117]

In *Canada v. Mohawks of the Bay of Quinte First Nation*, Ontario's First Nations argue that the funding policies discriminate against larger First Nations because they receive considerably less per capita than smaller First Nations.[118] The view of the Commission is that funding should be measured equitably, with comparably sized and located provincial schools.

The underfunding of schools on reserve violates legal Treaty obligations and continues the legacy of discriminatory neglect and underfunding seen in the residential schools. Even the funding that is available is unstable and short term, with First Nations schools having to re-apply with each funding cycle.[119] This makes long-term planning next to impossible.

Capital costs

Funding shortfalls extend to capital expenditures for First Nations school buildings as well. There are at least one hundred schools that are in such poor condition that they are considered unsafe, with no plan in place to either repair or replace them.[120] For example, the school in North Caribou Lake in Northern Ontario is plagued by black mould. The outside walls of the building are so weak that they move when pushed. Large-scale repairs are necessary but are not possible with the funds provided by Aboriginal Affairs.[121]

The Office of the Parliamentary Budget Officer noted that, in 2009–10, capital expenditures were "under-funded by about $169 million in the best case, and $189 million in the worst-case scenario."[122]

First Nations children attending provincial schools

Provincial education systems are built around a school board structure (often called second-level structures). School boards determine the number, size, and location of schools. They build, equip, maintain, supervise, and furnish schools and provide student transportation. These boards provide education programs, such as special education, prepare annual budgets, hire teachers and other staff, and organize professional development. The boards ensure schools abide by the standards established in provincial education laws. By comparison, First Nations educational organizations operate in relative isolation.[123]

Provincial schools are also governed by their ministries of education. These ministries set education policy, determine school curricula, approve texts, establish student standards, determine teacher qualifications, and set classroom size, as well as invest in research and analysis to measure the achievement of students.

Most First Nations do not have a comparable level of governance, although there are examples of First Nations working together to form education authorities and regional management organizations. There are positive examples emerging in Saskatchewan, with tribal councils establishing "second-level" services and regional management organizations.[124] In Québec, the Cree School Board was established under the 1975 James Bay and Northern Quebec Agreement.[125] Cree language and culture are at the basis of the curriculum, which is designed and controlled by the Cree—including setting a Cree school calendar that allows Cree youth to participate in traditional hunting and fishing. It provides education services to primary, secondary, and post-secondary students.[126] But even with a modern agreement, the Cree School Board has had difficulty with funding and the board had to go to court to ensure that it was an equal participant in establishing the funding formula that would apply to their own schools.[127]

There are also examples of First Nations political organizations working to provide similar supports in some areas.[128] But none have the capacity, or the mandate or, most importantly, the funding to match even a tiny portion of what a provincial or territorial ministry of education has.[129]

The education inequity continues when Aboriginal parents send their children to provincially run schools. First Nations are obliged to pay fees to school boards so that their children can attend public schools. The First Nations then receive money from the federal government to cover those fees. However, Ottawa does not take into account any increases in provincial student fees so the First Nations often have to pay the difference. Table 2.1 demonstrates the gap between federal funding and the rates that the band has to pay to send student to local school boards.

Table 2.1. Tuition fees for Timiskaming First Nation students vs. federal funding, 2010

	Provincial tuition fees charged for First Nation students attending provincial schools		Band school rates paid by Aboriginal Affairs	
School Board	Elementary	Secondary	Elementary	Secondary
Northeastern Catholic School District of Ontario	$12,796	N/A	$4,951	N/A
District Ontario North East	$11,584	$12,552	$4,951	$5,579
Conseil catholique Grandes-Rivières Ontario	$12,280	$14,528	$4,951	$5,579

Source: FNEC, NAN, and FSIN, *Report on Priority Actions in View of Improving First Nations Education*, 42.

As the table demonstrates, the Timiskaming First Nation must pay between $11,584 to $12,796 for each child they send off reserve to attend a provincial public or Catholic elementary school. Yet they receive less than half that amount from Aboriginal Affairs (just $4,951) for the funding of each student's education.

First Nations struggle to ensure their children receive even an adequate education. They do so "with tenuous authority and without any specific funding to enable their systems to provide second-and-third level services comparable to those offered by provincial/territorial systems."[130]

The Senate Standing Committee on Aboriginal Peoples found that the absence of adequate funding supports is "among the key factors that contribute to the unacceptable gap in educational attainment rates between First Nations students and their Canadian counterparts; a gap that is unlikely to substantially improve unless this educational infrastructure deficit is addressed."[131]

8) We call upon the federal government to eliminate the discrepancy in federal education funding for First Nations children being educated on reserves and those First Nations children being educated off reserves.

9) We call upon the federal government to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.

Meeting learning needs of Aboriginal students

Aboriginal students in many cases have diverse and unique needs that mean simply providing identical funding to a provincial school system is not sufficient. The need for the schools to teach Aboriginal language and culture is one example of such needs. Hundreds of Survivors have told the Commission that the incorporation of Aboriginal culture and language into the life of First Nation schools and communities is essential to overcoming the impact of the residential schools.

Provincial education systems must better accommodate Aboriginal children especially given the growth of urban Aboriginal populations. A 2013 study by the education advocacy group People for Education indicates that, while over 90% of schools in Ontario have Aboriginal students, and while 82% of Aboriginal children in Ontario attend provincial schools, "51% of elementary schools and 41% of secondary schools offer no Aboriginal education programs or opportunities, such as professional development or cultural support programs."[132] Native studies scholar Leroy Little Bear notes that language, songs, stories, and ceremonies are the repositories of knowledge. He states that "knowledge, from an Indigenous perspective, is the relationships one has to 'all my relations,'" which he says includes "everything in creation."[133] These elements are generally not evident in the provinciai and territorial education systems. In spite of efforts to be more inclusive of Aboriginal learners, public schools are not Aboriginal places of learning.

Although efforts are being made, such as the development of the Common Curriculum Framework for Aboriginal Language and Culture Programs in the western provinces,[134] in general provincial, federal, and territorial governments have not committed the necessary resources to accomplish the task.[135]

The Canadian Heritage department's Task Force on Aboriginal Languages and Culture has identified immersion and bilingual programming as the preferred method for providing language education. But it noted in 2005 that very few such programs are available to First Nations, Inuit, or Métis students due to lack of support from school boards or other educational authorities, limited funding, and lack of teachers and materials.[136]

Elementary schools with higher proportions of Aboriginal students are also half as likely to have specialist physical education, health, or music teachers. Studies show that 59% of First Nations and Métis high school students are in applied courses (as opposed to academic courses) compared to a 30% provincial average.[137] In other words, the legacy of low expectations for Aboriginal children manifested in the residential school era continues today.

Ontario has taken steps to improve the educational experience of Aboriginal students, to work with Aboriginal leaders and organizations to improve education outcomes for Aboriginal students, and to develop curriculum that more accurately reflects Aboriginal issues and history.[138] Support documents have been developed for teaching seven Aboriginal languages, and Aboriginal language courses are available as an alternative to French as a second language. Curriculum policy documents have been developed for teaching Native studies in Grades Nine through Twelve.[139]

The province has established a baseline from the 2011–12 year from which it will be able to more accurately measure whether outcomes for Aboriginal students improve.[140] The baseline shows that First Nation, Métis, and Inuit students are not achieving at the same level as all Ontario students. For example, Grade Three and Six reading scores show gaps ranging from 5 to 33 percentage points between the numbers of First Nation, Métis, and Inuit students and the numbers of English- and French-language students achieving at or above the provincial standard; Grade Three and Six writing scores show gaps ranging from 8 to 35 percentage points; Grade Three and Six mathematics scores show First Nation, Métis, and Inuit student results ranging from 6 to 51 percentage points below all English- and French-language student results; Grade Nine mathematics results indicate a gap of up to 19 percentage points. The percentage of First Nation, Métis, and Inuit students accumulating 8 or more credits in their Grade Nine year ranges from 10 to 24 percentage points below the provincial average.[141]

This baseline data is critical for measuring successes and failures as Ontario continues to work with Aboriginal communities to improve the quality of education provided to Aboriginal students in the provincial schools and serves as a good model for other provinces and territories.

Early childhood education

The Royal Commission on Aboriginal Peoples stressed the importance of early childhood education, stating that "Aboriginal parents and educators consistently press for holistic programs that address the physical, intellectual, social, emotional, and spiritual development of children." The report went on to say, "This priority should guide the design and operation of all early childhood programs."[142] It also noted that early childhood programs were excellent vehicles for parental involvement and for use of Aboriginal languages, and recommended that they should be delivered in a way that maximizes Aboriginal control and parental involvement.[143]

Despite some increases in funding and availability of childcare spaces after the RCAP recommendations, Aboriginal families continue to suffer from a general lack of early childhood education. Based on 2011 data, the Assembly of First Nations (AFN) reported that 78% of children aged 0 to 5 do not have access to licensed day care.[144]

RCAP also emphasized that parents play a key role in preparing their children to participate in two worlds.[145] The Royal Commission recommended that all schools serving Aboriginal children should adopt policies that welcome the involvement of Aboriginal parents, Elders, and families in the life of the school.[146] It recognized that this would require not only Aboriginal control of schools where possible, but also that provincial and territorial governments work more closely with Aboriginal people to develop "innovative curricula that reflect Aboriginal cultures and community realities,"[147] which would also encourage the teaching and preservation of Aboriginal languages.[148]

Since 1995, Health Canada has run the Aboriginal Head Start program, claiming to support over 9,000 children in 300 different programs in First Nations communities on reserve.[149] However a 2012 evaluation done for the Public Health Agency of Canada reported that there were only 4,640 spaces for children aged 0 to 6 in these programs. Furthermore, there are almost 48,000 Aboriginal children aged 3 to 5 living off reserve. The report noted this vast underservicing despite the higher needs of Aboriginal children who

- are overrepresented in the child welfare system;
- experience higher levels of moderate and severe food insecurity (33%) than non-Aboriginal populations (9%);
- are twice as likely to experience poverty as the general Canadian population; and
- are two to three times more likely than non-Aboriginal Canadians to be raised by young, single parents.

The evaluation also reported that it found "no evidence of systematic coordination between the Public Health Agency and other federal departments delivering similar programs, namely Aboriginal Affairs and Northern Development Canada, as well as Human Resources and Skills Development Canada."[150]

Although some provinces are moving towards full-day kindergarten for five- and even four-year-olds, others are not. In provinces and territories such as Alberta, Saskatchewan, and the Northwest Territories that leave such decisions to individual school divisions, it seems unlikely that full-day programs will be extended to school districts with high Aboriginal populations.[151] Given the young demographics of First Nations communities, it is particularly disappointing that neither the federal government's 2013 *Blueprint for Legislation* nor its proposed *First Nations Education Act* featured a commitment to early childhood education.

(4) *We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families.*

Special education

Federal funding for special education is particularly problematic when compared with provincial schools. Aboriginal Affairs consultants were told of a number of examples in which on-reserve students who are ineligible for "High-Cost Special Education" support through Aboriginal Affairs criteria on reserve would be qualified if they lived in the adjacent provincial school district.[illegible]

The Mississaugas of the New Credit First Nation are pursuing a human rights complaint arguing that Canada's special education funding discriminates against First Nations. The Mississaugas lodged the complaint when Aboriginal Affairs refused to pay for the special education supports required by two children with Down's syndrome. Because of their special needs, the two children must attend a provincial school, as the services they require are not available on reserve. The provincial school charges a fee of over $80,000 per year for the education supports these students require. Canada has refused to cover the cost, saying that the First Nation should pay for the costs out of their existing special needs budget. However, the Mississaugas entire budget for all its students with special needs is $102,000 per year, and these funds are already allocated for other children with different types of special needs. The complaint argues that First Nations children are not guaranteed the same level of special education services as non-First Nations children.[illegible] This complaint is currently being reviewed by the Canadian Human Rights Commission.

This and other similar cases fit into a growing and very disturbing pattern of Aboriginal people having to take the government to court to argue for a basic Aboriginal right to equal education. Unfortunately, Aboriginal children and communities often pay the price for the delay.

Post-secondary education

Post-secondary education should be seen as an opportunity to increase the supply of skilled Aboriginal personnel needed by Aboriginal communities to develop and manage their own institutions. Increased access to post-secondary education is essential if the income and employment gap between Aboriginal people and other Canadians is to be closed. However, post-secondary education for Aboriginal learners is inadequate and inaccessible for many. From 1876 until 1927, the federal minister of

Indian Affairs had the right to strip First Nations individuals of their Indian status if they were:

> admitted to the Degree of Doctor of Medicine, or to any other Degree by any University of Learning, or who may be admitted in any Province of the Dominion to practice law either as an Advocate or as a Barrister or Counsellor or Solicitor or Attorney or to be a Notary Public, or who may enter Holy Orders or who may be licensed by any denomination of Christians as a Minister of the Gospel.[illegible]

Access to post-secondary education remains problematic. Only 8.7% of First Nations people, 5.1% of Inuit, and 11.7% of Métis have a university degree, according to the 2011 census.[illegible] Yet, as noted earlier in this chapter, where Aboriginal students have the opportunity to complete a university education, the income gap with non-Aboriginal Canadians virtually disappears.

Some of the Survivors who spoke to the Commission recounted difficulty in obtaining a higher education. Jennie Thomas attended the Kuper Island, British Columbia, school and went on to graduate from the University of Victoria with a bachelor of social work and child welfare specialization. She explained,

> I was pretty much the only native woman in the class with the class of young, white girls that just got out of high school by the looks of it, and it was, that's who were, that's who my peers were in my cohorts. So, all through my academic life at, you know, I was definitely the older woman in the class, the only native in the class. So, that really took some getting used to. But I've always known that I was gonna, if I started something, I was gonna finish it. So a lot of my experiences in here, have—whether I like it or not—are based on my experience as a child at Kuper Island Residential School.[illegible]

Velma Jackson attended residential school in Saddle Lake, Alberta. She used the settlement money from her Common Experience Payment to study at university:

> I applied to Frog Lake band for them to pay for my education, and they said, "Oh, no, you have no money, your money ran out." He said, "You've exhausted all your resources," is what I was told. So out of the $13,000 I got, most of it went to educating myself, to try and get a Cree language instructor diploma. So, I spent most of my, my money on that.[illegible]

If access to post-secondary education is to be improved, clearly increasing secondary school completion rates is an important step. But even for those who qualify for a university program, there are significant obstacles.

The First Nations Education Council estimated in 2007 that there was a backlog of over 10,000 First Nations students waiting for post-secondary funding, with more than $200 million required to clear that backlog and meet current demands.[illegible]

There are no universities in the Northwest Territories, Nunavut, or Yukon. This poses a serious barrier to Inuit and other Northern Indigenous peoples trying to obtain a degree.[illegible] Southern universities and colleges are poorly equipped to provide the cultural and language instruction that enables students [illegible] within their communities. This helps explain why the Inuit and Northern First Nations have lower rates of post-secondary education than southern First Nations and Métis peoples. There are, however, some promising developments. For example, the First Nations University of Canada, the Saskatchewan Indian Institute of Technologies, and the Saskatchewan Indian Cultural College are important institutions that support the language, culture, history, and education of many First Nations.[illegible] [illegible], of Royal Roads University, told the Senate Committee on Social Affairs, Science and Technology that the First Nations University of Canada (Regina) is critical to Aboriginals because it was a "safe place for people who are coming in from tiny, Northern, Aboriginal communities that may have only 100, 200 or 300 people ... To be in an institution that is built around their culture, in which they are dealing [illegible] ... the content in the curricula reflects their own ways of life ... is an important way to ensure that they complete their post-secondary education." The Senate Committee noted that there is evidence that Indigenous institutions have a higher graduation rate than non-Aboriginal institutions.[illegible]

As of 2007, there were approximately ten thousand students attending forty-five Aboriginal post-secondary institutions.[illegible] Many of these institutions are technical campuses, such as the [illegible] Skills and Trades Training Centre in [illegible], Ontario, which offers welding, automotive, and construction training, or Yellowquill College in Winnipeg, which offers diplomas in Aboriginal business management or a certificate in community health.[illegible] However, most such institutes do not offer degree programs. Many of their certificates and diplomas are not recognized by universities. Many of these institutions also suffer from significant underfunding, receiving only 50% of the necessary operating costs through Canada's Indian Studies Support Program.[illegible] Further, the Indian Studies Support Program provides project funding only, not day-to-day operational funding. As Aboriginal institutions do not have access, generally speaking, to provincial funding available to other colleges and universities, they must find alternative funding sources.[illegible]

> [illegible] We call upon the federal government to provide adequate funding to end the backlog of First Nations students seeking a post-secondary education.

Métis education

Even though Canada's Métis people have equal protection under section 35 of the Constitution, jurisdictional disputes between the federal and provincial governments continue to be a major obstacle to ensuring that the Métis have control over the

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The committee also recommended that education funding address factors such as demographics, remoteness, and the need for language preservation and revitalization programs.[illegible] The principle underlying all the recommendations was that the federal government's role should be to enable First Nations to create and adopt viable education systems "while acknowledging that primary responsibility for education rests with First Nations."[illegible]

The second report in 2012 was released by a national panel that was launched jointly by the national chief of the Assembly of First Nations, and the federal minister of Aboriginal affairs.[illegible] Like the Senate committee, the National Panel on First Nation Elementary and Secondary Education for Students on Reserve recommended the creation of a statute that would set out rights and responsibilities for Aboriginal education. The panel argued that any education statute must enshrine every First Nation child's right to their culture, language, and identity, regardless of whether they attend a First Nations or provincial school. The panel recommended that the proposed legislation include operational and capital statutory funding that would be needs-based, predictable, sustainable, and used specifically for education purposes. The panel also suggested that additional funding be allocated to provincial schools for the direct benefit of First Nations students enrolled in them.[illegible] It recommended that a clause be included in the statute ensuring that the legislation did not derogate from Treaty or other Aboriginal rights.[illegible]

Like the Senate committee, the National Panel emphasized the need for second- and third-level education structures and supports while maintaining First Nation control of First Nation education. The panel made a specific recommendation for the "third tier": a National Commission for First Nation Education, which would be created prior to the legislation and would oversee its development.

The second tier would be made up of First Nation Education Organizations, which would fulfill the role now filled by school boards in provincial systems and allow for economies of scale to support the delivery of quality education to First Nation learners.[illegible]

At the same time as the National Panel began its work, three First Nations organizations launched their own review. The First Nations Education Council (FNEC) (Québec), Nishnawbe Aski Nation (NAN) (Northern Ontario), and the Federation of Saskatchewan Indian Nations (FSIN) came together out of concern that the National Panel's work might not properly respect Treaty rights or recognize international law.[illegible] In their own 2011 report, titled *Report on Priority Actions in View of Improving First Nations Education*, the three organizations were less supportive of a legislative approach. They warned that the development of any legislation could only be done with the consent of Aboriginal peoples. They emphasized that Canada has a constitutional obligation to ensure that First Nations peoples have access to educational services of at least equivalent quality to those provided in the public school system. As a minimum, they emphasized, this will require a significant infusion of money.[illegible] They also advocated for greater transparency and accountability to First Nations communities by all parties delivering education—First Nations, provincial schools, and the federal government.

While not in complete agreement, a consistent and significant thread connected all these reports—the need for a complete restructuring based on principles of self-government, a culturally relevant curriculum, stable funding, and honouring of the treaties. Aboriginal peoples themselves must lead and control the process of change.

The Senate Committee and the National Panel reports both recommended the creation of a *First Nations Education Act*. The National Panel called for the federal government and First Nations to co-create a child-centred *First Nation Education Act*. The Act would not only recognize First Nations legislative jurisdiction but also empower First Nations to enact laws for the management and administration of First Nations schools. They agreed that the *Act* would not abrogate or derogate existing Aboriginal or Treaty rights. While establishing clear governance objectives, responsibilities and accountability, policies and procedures, and while defining the responsibilities and powers of the various components of a First Nation education system, the *Act* would have to acknowledge the rights of the child to a quality education regardless of whether they are enrolled in a First Nations or provincial/territorial school system. Although developed for First Nations on-reserve education, the principles developed by the National Panel could also apply with appropriate modifications to off-reserve, Inuit, and Métis populations. Aboriginal-controlled education today is widely regarded as the best tool to counter the historical use of education in residential schools as a means to assimilate and demean Aboriginal peoples.

Canada's proposed *First Nations Education Act*

Canada's initial response to these reports was heavy-handed and reminiscent of some of the same attitudes towards Aboriginal people that inspired residential schools. In December 2012, Aboriginal Affairs began a consultation process for the establishment of a *First Nations Education Act*. After a series of meetings across the country with some First Nation leadership, education practitioners, and community members, and after organizing an online survey, Canada released its *Blueprint for Legislation* on July 12, 2013.[illegible] The proposal included a few different models that First Nations could choose from:

- Community-operated schools
- Delegation to a First Nation Education Authority (an amalgamation of schools, like a school board)

- Agreements with a provincial school board to: (a) operate the First Nation school on reserve; or (b) allow students who live on reserve to attend provincial off-reserve schools.[107]

The *Blueprint* was a far cry from the joint development process advocated by the National Panel on Education and the Senate Standing Committee.

It provided no commitment to ensuring K–12 services would be available within a community. Rather, if a First Nation school offered education up to a certain grade, the legislation would require that school to have a transition plan for students moving into a provincial school.[108] The *Blueprint* did not address early childhood education, such as Junior Kindergarten, despite the widely recognized importance of its potential to help redress the Aboriginal child welfare crisis. While the *Blueprint* acknowledged Treaty rights, it made no specific commitment to ensure that Canada would meet its obligations under international law or preserve existing education rights found in the Treaties.

The federal government's *Blueprint* approach sent the message that it knew better than First Nations what was best for their children. This attitude was so reminiscent of the residential school era that it triggered substantial resistance from First Nations.

In October 2013 the government followed its *Blueprint* with its proposed *First Nations Education Act*. Under this proposed legislation, First Nation schools would have requirements for curriculum and graduation, student assessment and reporting, safety, daily operations, teaching supports, materials and equipment, compliance and enforcement, finance and accounting, human resources, and information technology. The Act would have legislated attendance requirements similar to provincial requirements, with all students between the ages of six and sixteen required to be registered in and attending school. Each school would be required to file an annual "student success plan."[109]

While it might be difficult to argue with such standards, there was nothing in the Act that addressed the financial ability of First Nation schools to meet or enforce such requirements. It provided no guarantee of increased or stable funding of First Nations schools. There was no assurance of equity in the distribution of resources to educate First Nations children in First Nations schools or in provincial or private schools. It also provided a mandatory structure where First Nations must have both a "Director of Education"[110] and a "school inspector."[111] This was a one-size-fits-all approach that failed to recognize the diversity of First Nations.

The *First Nations Education Act* contemplated paternalistic and punitive actions whereby the minister of Aboriginal Affairs and Northern Development could essentially take over First Nations schools for non-compliance with provisions in the Act. Special administrators could be appointed by the minister for open-ended periods of time and against the wishes of the First Nation affected.[112] The minister of Aboriginal

Affairs would also have unfettered discretion in creating regulations regarding reporting, human resources, and schooling requirements, including all matters required under the Act.[193] Such an approach did not renounce the colonial legacy of the residential schools: it continued them.

The Government of Canada defended the proposed legislation, saying that its goal was to provide better education outcomes for First Nation students.[194] But that goal is the same one that the government has consistently failed to meet for many years. Given the legacy of residential schools and the history of Aboriginal education, First Nations had little reason to trust that Canada would now fund First Nations education in a sustainable and appropriate way on the basis of policy alone, and without the corresponding force of law.

Furthermore, neither the *Blueprint* nor the proposed *First Nations Education Act* made any commitment to language revitalization or culturally tailored education. Instead, there was a mention that the curriculum may include instruction in Aboriginal culture and languages, and that there would have to be consultation with community committees on such matters.

The Commission has heard from thousands of Survivors about the loss of Aboriginal languages and culture in the residential schools, about their struggles to reconnect in later years with their languages and traditions, and about the great healing and redemptive value that such connections have had for them and their families. The frequency and conviction of these statements from Survivors and many of their descendants across all Indigenous communities within Canada make it abundantly clear that Aboriginal languages and cultures deserve much better treatment than what was contemplated in the proposed *First Nations Education Act*.

The Government of Canada's proposed *First Nations Education Act*, fit into the disturbing pattern of matters getting worse, not better, since the settlement of the residential school litigation and Canada's apology. The UN special rapporteur on the rights of Indigenous peoples, James Anaya, observed in October 2013,

> I urge the Government not to rush forward with this legislation, but to re-initiate discussions with aboriginal leaders to develop a process, and ultimately a bill, that addresses aboriginal concerns and incorporates aboriginal viewpoints on this fundamental issue. An equally important measure for improving educational outcomes, and one that could be implemented relatively quickly, is to ensure that funding delivered to aboriginal authorities for education per student is at least equivalent to that available in the provincial educational systems.[195]

The *First Nations Control of First Nations Education Act*

Matters improved somewhat with an announcement in February 2014 of an agreement between the Government of Canada and the Assembly of First Nations on a partnership to develop the *First Nations Control of First Nations Education Act*. This act differed significantly from the *First Nations Education Act* in that it did promise sustainable funding and instruction in Aboriginal culture and languages. The agreement accepted the case for change and reform as made by the three reports examined earlier in this chapter.

The bill would establish minimum education standards on reserve, consistent with provincial standards off reserve. For example, the legislation would require that First Nation schools teach a core curriculum that meets or exceeds provincial standards, that students meet minimum attendance requirements, that teachers are properly certified, and that First Nation schools award widely recognized diplomas or degrees.[196]

The agreement's commitments to sustainable funding was accompanied by allocations in the federal budget of February 2014 of over $2 billion in new funding to reserve schools. It promised to replace the long-standing 2% cap on annual increases with a 4.5% annual increase and $1.25 billion in new core funding from 2016–17 to 2018–19. In addition, $500 million over seven years was committed to improving school infrastructure, and $160 million over four years to an enhanced education fund.[197]

However, a number of Aboriginal leaders questioned the new act. They felt that it could threaten Treaty obligations and erode Aboriginal rights. Consequently, in May of 2014, at a meeting of the Assembly of First Nations, Aboriginal leaders voted to reject the proposed legislation. National Chief Shawn A-in-chut Atleo subsequently resigned and the Government of Canada announced that it was putting the legislation on hold.

This disagreement underscores the seriousness of this issue to Aboriginal leaders, and it highlights just how much work remains to be done. This particular disagreement is also a reminder of the deep levels of distrust that have built up over the years.

In this instance, history is not helpful. The legacy of the residential schools and the years of underfunded education have given many Aboriginal parents and leaders considerable opportunity to question the commitment and sincerity of any and all government proposals.

The tainted legacy of the *Indian Act* that forced Aboriginal parents to send their children to residential schools must be fully and finally set aside. The Government of Canada must end its pattern of underfunded and culturally and linguistically inappropriate Aboriginal education, which began with the residential schools.

The Commission is well aware how much work remains to be done. The process of consultation is essential. Any legislation and its accompanying proposals for funding must recognize that the contemporary needs of Aboriginal children, for at least the short and mid-term, are greater than for children in the general population, in large part because of the legacy of the government's own policies of assimilation.

Even without the legacy of residential schools, the challenges of providing quality education for remote, diverse, and small communities are immense. The federal government must, as the Assembly of First Nations itself recognized, work in partnership not only with the AFN but also with individual Aboriginal communities to ensure that the mistakes of the residential school era, as well as the more recent mistakes of the heavy-handed 2013 *Blueprint* and proposed *First Nations Education Act* are not repeated.

10) We call upon the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples. The new legislation would include a commitment to sufficient funding and would incorporate the following principles:

    i. Providing sufficient funding to close identified educational achievement gaps within one generation.
    ii. Improving education attainment levels and success rates.
    iii. Developing culturally appropriate curricula.
    iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.
    v. Enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems.
    vi. Enabling parents to fully participate in the education of their children.
    vii. Respecting and honouring Treaty relationships.

Overcoming the education legacy of residential schools

Supportive governance structures

Both the National Panel and the Standing Senate Committee recognized the need for additional governance structures to support Aboriginal education. The National Panel recommended the establishment of an independent National Commission for First Nations Education. The commission would replace the current role played by the federal Department of Aboriginal Affairs and Northern Development. It would be responsible for developing and implementing education goals, national curricula, standards and testing criteria, education policies, and funding allocation policies, much like provincial ministries of education. The commission would set standards for culturally appropriate education as well as professional standards for teachers and principals. Additionally, the commission would develop performance measurement and accountability. The National Panel also recommended the development of regional First Nation Education Organizations to facilitate the establishment of education services.

The February 2014 agreement between the federal government and the Assembly of First Nations made no mention of structures that may be necessary to support reserve schools, especially in remote and small communities.

Funding

The proposed *First Nations Control of First Nations Education Act* included a commitment that "the Government of Canada will provide First Nations education systems with a stable, predictable and sustainable funding model for First Nations education."[198] This was an important step forward, but it remains to be seen whether agreement can be reached on legal measures to make this commitment real. Too many programs that are necessary to redress the legacy of residential schools are vulnerable to the vagaries of governmental funding. The federal government has in many different contexts been attracted to a formal equality approach that fails to recognize the distinct and higher needs of Aboriginal students stemming in part from the legacy of residential schools and compounded by the isolation and high operating costs in so many remote Indigenous communities.

Aboriginal control of Aboriginal education

There have been some important recent developments that show the promise and the potential of Aboriginal self-determination in designing and developing education programs and systems.

New governance models

Across the North, Inuit education is on the cusp of significant transformation with some of the most promising models for self-governing education coming out of Northern communities. The Kativik School Board (established by the 1975 James Bay and Northern Quebec Agreement in Nunavik) has exclusive education jurisdiction in fourteen Inuit villages.[199] In addition to educating children, the board runs a training program for Inuit teachers, an upgrading program for non-Inuit teachers, adult education, and a research department.[illegible] The board also arranges and supervises post-secondary education for students studying in the South. The board designs its own curriculum, determines its own school calendar and languages of instruction, and trains its own teachers.

When Nunavut was founded in 1999, it passed education and language laws to protect the right to a culturally relevant curriculum. The *Consolidation of Inuit Language Protection Act* guarantees the right to Inuit language instruction in Nunavut's school system.[illegible] Nunavut's *Education Act* establishes a right to a bilingual education with the Inuit language, and makes Inuit knowledge the foundation of the education system.[illegible] Teaching Aboriginal languages in schools is one of the best ways to ensure respect and interest in culturally appropriate learning.

In 2006 in Labrador, the Nunatsiavut land claims settlement set the stage for the Nunatsiavut government's gradual takeover of the delivery of education.[illegible] Several promising practices have included parents as contributors and collaborators in curriculum-based Inuit camps, heritage fairs, and breakfast programs. This is a significant break from the practices of the residential schools. In the Northwest Territories, Inuit educators and Elders have developed some specialized curricula.[illegible]

However, these significant changes have not come without obstacles. Some regions have a greater capacity to develop the necessary resources than others. A shortage of bilingual educators is one of the greatest barriers to expanding bilingual education in Inuit schools.[illegible] There is also a lack of teaching and reading materials in Inuit languages.

Place-based learning

Based on the reports of the Aboriginal Learning Knowledge Centre (created by the Canadian Council on Learning) and the National Committee on Inuit Education, there is a need to recognize and strengthen place-based learning within classrooms that serve Aboriginal students.[illegible]

Place-based education is a philosophy that anchors the student's lessons in the cultures, the land, the history, and the stories of their communities. These connections are emphasized in every subject from the study of language to mathematics to social studies and science.

Such an approach allows Elders to play a role in Aboriginal education. Academically qualified teachers can work with Elders and other Aboriginal instructors to find culturally enriched ways to meet the standardized learning outcomes.

Marie Battiste is a Mi'kmaq scholar and director of the Aboriginal Education Research Centre at the University of Saskatchewan. She notes that reconciling First

Nation peoples to their own knowledge "should be a cornerstone feature of education for the future of First Nations."[illegible] Place-based learning can also be a source for all forms of Indigenous knowledge, including Indigenous science, which Professor Battiste describes as "a dynamic, living process watching, listening, connecting, responding and renewing. Indigenous science embodies a holistic view of the world in which all human, animal, and plant life are perceived as being connected, related and interdependent."[illegible]

Leroy Little Bear notes that "it is not enough to only know about places, its history or narrative, but a learner must experience them both physically and emotionally, achieved through rituals, and visitations."[illegible] In the view of the Commission, rooting learning in a local context is an important step towards effective education.

Negotiated agreements

A growing number of self-government agreements negotiated between First Nations and federal and provincial governments contain education jurisdiction components, including Sechelt (1986), Nisga'a (2000), Tlicho (2005), Tsawwassen (2009), Maa-nulth First Nations (2011), and the Yale First Nation (2013). However, many First Nations with such self-government agreements have chosen not to exercise that jurisdiction because of the lack of support for the elements of a system of education.[illegible]

The other emerging trend has been towards the negotiation of tripartite agreements. In 1998, eleven Mi'kmaq First Nations concluded the first tripartite agreement providing for the transfer of education to local control.[illegible] Under the agreement, the education sections of the *Indian Act*—provisions that once forced Aboriginal parents to send their children to residential school—cease to apply to the participating communities. The agreement also provides that First Nation laws regarding education on reserves prevail over provincial education laws. The Mi'kmaq schools under this agreement have been pioneers in programs designed to preserve and draw on the wisdom of the Mi'kmaq language and have become important cultural centres for the whole community.[illegible]

In 2006 the Government of Canada, British Columbia, and the First Nations Education Steering Committee signed the Education Jurisdiction Framework Agreement, which put in place a process to transfer jurisdiction over on-reserve education to participating First Nations in British Columbia.[illegible] The *First Nations Jurisdiction over Education in British Columbia Act* gives effect to the framework agreement.[illegible]

Those First Nations in British Columbia that wish to participate can negotiate individual education agreements that transfer education authority to the participating and/or self-governing First Nations. Once a jurisdiction agreement has been ratified, participating First Nations assume responsibility for providing educational services from Kindergarten to Grade Twelve on reserves. The agreement also established a First Nations Education Authority to support First Nations in exercising education jurisdiction in three key areas: teacher certification, school certification, and the establishment of curriculum and examination standards. First Nations can co-manage educational services with the Authority, or delegate their jurisdiction entirely to the Authority.[illegible]

Apart from these approaches, other tripartite agreements have been negotiated in four provinces (Manitoba, New Brunswick, Alberta, and Prince Edward Island) and there is a sub-regional agreement with the Saskatoon Tribal Council.[illegible] Canada states that the seven tripartite education agreements (which include the BC and Nova Scotia agreements referred to above) cover "30% of eligible First Nation communities."[illegible] However, unlike the agreements concluded in BC and Nova Scotia, the agreements negotiated through the Education Partnership Program are not legally binding and do not involve a transfer of jurisdiction. Instead, the agreements are focused on promoting collaborative relationships between the parties and committing to developing strategies to improve educational outcomes for First Nations students who attend both band-operated schools and provincial schools.[illegible]

There are also promising examples of Aboriginal peoples working within the public education systems to better meet the needs of Aboriginal students. The Mi'kmaq Kina'matnewey (Nova Scotia) and the Akwesasne Mohawk Board of Education (Ontario) have established agreements that require the public education system to be more reflective of Aboriginal culture, values, and language.[illegible]

In 1999, the First Nation Education Steering Committee (BC) engaged Canada, the province, and the BC Teachers' Federation in discussions aimed at improving school success for Aboriginal learners. The memorandum of understanding that was eventually signed in BC set the foundation for the creation of local enhancement agreements requiring public schools to provide strong programs on the culture of local Aboriginal peoples.[illegible]

These developments are promising, but there is also reason to be cautious. The Senate Standing Committee on Aboriginal Peoples observed that while these partnership agreements have some benefits, witnesses who testified before the committee argued they are not a lasting solution to the education challenges facing First Nations. Legislation developed in genuine partnership with First Nations to ensure Aboriginal control over education and adequate funding for the great challenges left by residential schools is still necessary.[illegible]

Meanwhile, as in other legacy areas such as child welfare and health, these education developments are taking place on a piecemeal basis, agreement by agreement across the country. Aboriginal peoples have neither the resources nor the time required to negotiate and renegotiate such temporary agreements. Significant and durable change, which honours the Treaties and Aboriginal peoples' rights to self-determination, must happen much more quickly to ensure that today's children are not left behind.

Non-Aboriginal students

The Commission hosted more than 15,000 Aboriginal and non-Aboriginal high school students at special Education Days aimed at familiarizing them with Canada's residential school history, and allowing them to hear first-hand from Survivors. Non-Aboriginal students have been among the most vocal, and indeed, at times, outraged, in saying that someone should have taught them about all of this a long time ago. Young people have told the Commission that they want to know the whole truth about our country—that this has helped them better understand why things are the way they are, in their homes, in their communities, on the streets of our country, and in their schools. The Commission wholeheartedly agrees with them. Better integration of Canadian history affecting Aboriginal peoples, as well as Aboriginal peoples' own perspectives, history, and languages in the public school curriculum, will assist non-Aboriginal children as well as Aboriginal children.

The Commission has received encouraging replies from ministries of education in a number of provinces, including Alberta, Manitoba, and New Brunswick, about their determination to include Aboriginal experiences in the curriculum from Kindergarten to Grade Twelve. Such curriculum changes are already in place in the territories.

In Ontario, enrolment in Aboriginal languages and Native studies programs in public schools has increased from 7,193 students in 2007 to 19,185 students in 2011 with the assistance of targeted funding.[illegible] Some provinces, such as Saskatchewan, have focused on education about residential schools. This is a positive development, but there is need to examine other aspects of Aboriginal history and culture—and to recognize the benefits of examining those other aspects.

Conclusion

Residential schools failed miserably in their mission to provide Aboriginal children with a decent education. Although a few graduates of the schools went on to play leadership roles, the vast majority of students suffered from poor education and were often permanently estranged from continuing their education. This should not be surprising. The education they experienced in residential schools was a violation of their rights. It was an instrument of assimilation and limitation, and a belittlement of their personal and collective Indigenous identities, cultures, and languages.

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CHAPTER [illegible]

"I Lost My Talk": The erosion of language and culture

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forced to abandon their languages and cultural practices. They became alienated from their families, their communities, and ultimately from themselves. This damage was passed down through the generations, as former students found themselves unable or unwilling to teach their own children Aboriginal languages and cultural ways.

Many of the residential school Survivors who spoke to the Truth and Reconciliation Commission have stressed the pain caused to them from this loss of their very identity. It is their stories that have guided the work of the Commission. In the words of Elder Shirley Williams, "Language and culture cannot be separate from each other—if they are, the language only becomes a tool, a thing .... Our language and culture are our identity and tell us who we are, where we came from and where we are going."[illegible]

In this chapter, the Survivors explain how the loss of languages led to a loss of identity and ultimately brought Aboriginal people face to face with the destruction of their cultures. The loss of identity cast children into a state of confusion over what was right and good in their lives.

The chapter examines the current threats to the survival of Aboriginal languages, and looks at why the loss of Aboriginal language, identity, and culture is so important to non-Aboriginal Canadians. It will also examine the failure of the Canadian government to support the preservation of Aboriginal languages despite their protected status under the Constitution and international agreements. The final part of this chapter will address what has been done and what still needs to be done to preserve Aboriginal languages and cultures.

In our Calls to Action, the Commission will assert that a multi-pronged approach to Aboriginal language preservation—if implemented, honourably resourced, and sustained—can begin the promise of reconciliation with Survivors and their families, people who, through numerous generations, still bear the scars and the losses of the residential schools.

Loss of language and culture

> The punishment of speaking Mi'kmaq began on our first day at school, but the punishment has continued all our lives as we try to piece together who we are and what the world means to us with a language many of us had to re-learn as adults.
>
> *—Isabelle Knockwood,*
> *Survivor of Shubenacadie Residential School*[illegible]

I lost my talk
The talk you took away.
When I was a little girl
At Shubenacadie School.

—Rita Joe, Survivor of Shubenacadie Residential School,
"I Lost My Talk"[11]

Thousands of children were moved into residential schools at a very young age. When Nellie Trapper went to Horden Hall in Moose Factory, Ontario, she was six years old. She recalled, "I just followed everybody around 'cause I didn't understand what they were telling me to do; just followed the crowd … There was a lot of stuff that I got in trouble for, and I didn't know why 'cause I didn't understand what they were telling me to do, or, because I only spoke Cree."[12]

Life in residential schools was both confusing and frightening. Greg Rainville was sent to the Qu'Appelle, Saskatchewan, school. He remembered,

> I was punished because the nuns would get frustrated with you when they talk to you in French and English, and you're not knowing what they're talking about, and you're pulled around by the ear, and whatnot, and slapped on the back of the head, and stuff like that. And I didn't know what I was doing wrong. No matter what, I tried to do good, but I couldn't understand what they were saying, and they couldn't understand what I was saying, but I was punished.[13]

When the children had their languages stripped from them, they not only lost the ability to communicate with one another, they were forced to question if what they knew, and if what they had been taught since birth had any value at all. John Tootoosis, who attended the Delmas, Saskatchewan, school, said that for Aboriginal children, the residential school experience was

> like being put between two walls in a room and left hanging in the middle. On one side are all the things he learned from his people and their way of life that was being wiped out, and on the other side are the white man's ways which he could never fully understand since he never had the right amount of education and could not be part of it. There he is, hanging in the middle of two cultures and he is not a white man and he is not an Indian.[14]

According to social anthropologist Wade Davis, culture "is not decoration or artifice, the songs we sing or even the prayers we chant. It is a blanket of comfort that gives meaning to lives."[15] This section examines some of the devastating effects of taking away that "blanket of comfort" of Aboriginal cultures and languages from the children who attended residential schools, and the intergenerational effects of such deprivations.

The statements of the Survivors are our best guide to understanding what was lost, or stolen, or deemed "evil" in the residential school system. The culture that the children were forced to abandon covered everything from the basics of food and clothing and family to their essential understanding of home and history to the most sacred—their stories and their spirituality.

Mary Siemans explained the connection between language and culture:

> Our Dogrib language ... identifies us as a people in a unique culture within the land we occupy. Our language holds our culture, our perspective, our history, and our inheritance. What type of people we are, where we came from, what land we claim, and all our legends are based on the language we speak. Our culture depends on our language, because it contains the unique words that describe our way of life. It describes name places for every part of our land that our ancestors travelled on ... Rules which govern our lives bring stability to our communities, and our feast days, which bring people together, are all inter-related within our language. Losing our language will not only weaken us as a people but will diminish our way of life because it depend so much on our language.[16]

Doris Young speaking at the Commission's National Event in Saskatoon, Saskatchewan remembers the way students were forced to dress:

> They took away our clothes, and gave us clothes that, that everybody else [wore], we all looked alike, our hair was all the same, cut us into bangs, and, and straight short, straight hair up to our ears. And there was our shoes, they took away our moccasins, and gave us shoes, which I was not, I was just a baby, I had, didn't actually wear shoes; we wore moccasins.[17]

Martin Nicholas was sent to school with new, handmade clothing. A "buckskin jacket, beaded with fringes ... My mom did beautiful work, and I was really proud of my clothes." But the moccasins, pants, and jacket she made were taken from him on his first day at school and never returned. He recalled, "that was the only one time I wore them."[18]

The Survivors shared many painful memories about the way their culture was stripped away from them. Sarah McLeod spoke at the community hearing in Kamloops, British Columbia, about the residential school attack on Aboriginal spirituality:

> When I got here I was so proud of my totem pole ... and I showed it to the nun. I said, "Look what I got for my birthday. I really like my totem." She went, "Ah!" She said, "You throw that away. Throw it away right now. Put it in the garbage right now." I looked at her. I said, "But that's my birthday present." "No, that's no good. That's the devil seeing that totem pole. It's out. Devil, can't you see all the devil in there? You throw it away right now!" And she made me throw it in the garbage, and it was, I didn't know, I said to myself, "Oh, my gosh. All this time I was, I was hugging this devil?" You know I didn't know that.... I never forgot it. I still, deep

> in my heart, I still think it's always something that I shouldn't have thrown away. It's just how much they, they tried to take culture away from us.[19]

Going beyond the condemnation of childhood basics like food and clothing the students were further encouraged to adopt the racist attitudes of the schools. Archie Hyacinthe recalled his time at the St. Mary's Residential School in Kenora, Ontario:

> The sad part of it was, we used to watch cowboys and Indian movies on TV, black and white TV. We would be cheering for the cowboys, you know. Here we were saying to the Indians because "they're losers," you know. See, this is what the school did to you. They taught you how to be, you know, turn against your own people, your own culture.[20]

The Commission heard time and again the wrenching memories of children who found that they couldn't even go home anymore. Mary Courchene spoke at the community hearing in Pine Creek, Manitoba, of how she felt when she returned to her parents' home after a year in residential school:

> I looked at my dad, I looked at my mom, I looked at my dad again. You know what? I hated them. I just absolutely hated my own parents. Not because I thought they abandoned me; I hated their brown faces. I hated them because they were Indians ... This is what we were told everyday; "You savage. Your ancestors are no good."[21]

Hubert Nanacowop attended Our Lady of the Snows School in Berens River, Manitoba. He recalled, "I always thought being an Indian was just like being next to a pig, and that's the way they used to call us. And I couldn't talk, talk my own language, which is Anishinaabe ... We had all kinds of troubles with that."[22]

Richard Kaiyogana, Sr., attended the Coppermine tent hostel in the Northwest Territories. He told the Commission, "Okay, why not think like a white man? Talk like a white man? Eat like a white man ... so I don't have to get strapped anymore."[23]

Agnes Mills spoke to the Commission at a sharing circle in Inuvik, Northwest Territories. She explained,

> And one of the things that residential school did for me, I really regret, is it made me ashamed of who I was ... And I wanted to be white so bad, and the worst thing I ever did was I was ashamed of my mother, that honourable woman, because she couldn't speak English, she never went to school, and they told us that we used to go home to her on Saturdays, and they told us that we couldn't talk Gwich'in to her and, and she couldn't, like couldn't communicate. And my sister was the one that had the nerve to tell her. "We can't talk Loucheux to you, they told us not to."[24]

Betsy Olson remembers how hard it was for her family to welcome her home: "Mom had to buy white man's food to feed me 'cause I couldn't eat our, our way of eating back home. I couldn't eat soup. I couldn't eat fish. I couldn't eat bannock. Couldn't eat nothing ... Mom had to get extra money to try and buy extra food just for me."[25]

Eva Lepage is an Inuk woman who attended the Churchill Vocational Centre in Manitoba. She spoke to the Commission at the Atlantic National Event:

> I was not accepted by white people because of my colour. My own people did not accept me either... I've been hurt a lot by, by white people but I also been hurt a lot by my own people because people hurting so much they hurt each other, and they don't see it. I'm not in my community either. For thirty years I live where I didn't grow up, so all my family relatives are not, never hardly are around me.[26]

Roy Thunder and his friends at the Shingwauk Residential School in Sault Ste. Marie had to, quite literally, battle for their identities. He remembered, "Reserve kids ... were making fun of us 'cause we were talking English ... There were times, too ... they wanted to fight us ... because they thought we were, you know, white kids."[27]

Sabina Hunter grew up in Goose Bay: "At eighteen I left Labrador with no intention of coming back ... When I lived outside people thought I was Oriental and so I would use that. I would take advantage of that. I didn't want to be Inuk. And during that time I drank a lot. I was not a person to be proud of."[28]

Rosemary Paul spoke to the Commission in Halifax, Nova Scotia: "They made fun of me because I couldn't speak Mi'kmaq and to this day I still try to fit in and I still, like, consider myself an outsider. I mean, I can still go to my reserve and everybody, you know, hugs and kisses me, but I still consider myself an outsider."[29]

Professor Lorena Sekwan Fontaine is from the Sagkeeng First Nation in Manitoba. She explained,

> My stepfather said he never spoke Cree to me partially because of the shame he felt. At first he never articulated the source of the shame, but a few years ago he said it was a result of his residential school experiences. He often spoke to me with a heavy heart, saying, "there are so many things I cannot express to you in English because there are only Cree words to describe what I am feeling."[30]

Henry "Curly" Ruck told the Commission that his mother attended the Elkhorn Residential School in Manitoba and consequently had a very limited understanding of Aboriginal culture:

> She phoned me one day and asked me if she could come over. It was on a Sunday morning.... But I told her I couldn't do it that Sunday because we were going to a sweat. And all she said to me was, "What?" I said, "We're going to a sweat." She says, "What's that?" And I said, "A sweat lodge. We're going to go sit in a sweat lodge." And she said, "What the hell is that?" That's why to me ... she lost everything. She lost her culture. She lost everything. That residential school took everything away from her.[31]

Listening to the voices of the Survivors, it is difficult to measure how much was lost when their languages and cultures were so systematically and savagely suppressed. Many Survivors and their descendants have a huge sense of loss and either a sense of anger or sadness about their loss. Such Survivors lead the cultural and language revitalization movements that are happening across the country. Others, who have accepted and embraced the Christian doctrines imposed on them at the schools, reject the value of the traditions and languages of their own people. These Survivors sometimes actively fight against cultural revitalization. Tension and turmoil often result between these groups when they exist in the same community. This friction too needs to be seen as one of the legacies of residential schools.

Language, culture, and health

Culture and language are closely connected not only to a sense of self but also to physical well-being. Positive cultural identity has been linked to resilience and good mental health among minorities. Cultural loss has been recognized as a significant determinant of health in the Aboriginal community.[32]

In its 2010 review of the health of Aboriginal languages in BC, the First People's Heritage, Language and Cultures Council concluded,

> The loss of language is directly related to the troubling health issues many First Nations are facing today. Knowledge of one's language is related to physical, mental and spiritual health. It is an expression of ways of life, ways of thinking, and cultural understanding. Language revitalization plays a vital role in community growth, healing, education, development, strong families and reconnection to the past. A healthy language means healthy individuals, healthy communities, and contributing members to society.[33]

The First Nations-controlled Regional Longitudinal Health Survey has concluded that "the closer a people are to their Nation's 'roots' and their spiritual beliefs and practices, the higher the levels of health and self-esteem found within that community."[34] The attack on Aboriginal languages and cultures at residential schools was also an attack on the very health of Aboriginal students. The connection between wellness and culture will be discussed at greater length in the next chapter on health.

In the 1990 Standing Committee on Aboriginal Affairs report titled *"You Took My Talk": Aboriginal Literacy and Empowerment*, Sala Padlayat, director of the Salluit Adult Education Centre, eloquently describes the relationship between mother tongue literacy and self-esteem. She explains,

> I truly believe that my strength, my feeling of self-worth as an Inuk is in part because I had access to a form of communication, our written language, that is uniquely our own.... Not all of our young people are as fortunate to have the

> support I received from my family. When alien ways are pressed on them, they cannot differentiate between what is real and what is superficial, what is essential and what in reality is trivial. They are confused, lost, bitter, because they feel abandoned.[35]

Positive cultural identity has the power to protect as well as to heal. Strikingly, researchers in BC found that significantly lower suicide rates are correlated with those bands in which a majority of members have a conversational knowledge of an Aboriginal language. Correlation does not imply causation, but the researchers concluded "that indigenous language use, as a marker of cultural persistence, is a strong predictor of health and well being in Canada's Aboriginal communities."[36] There is also evidence that the use of an Aboriginal language at home is positively associated with the success of children living off reserve at school.[37] Survivors who struggle with addictions, mental health issues, and imprisonment can benefit from greater engagement with Aboriginal languages and culture. Recognizing the connection between culture and health, the Royal Commission on Aboriginal Peoples (RCAP) observed, "it is often the most distressed and alienated Aboriginal people who find the greatest healing power in the reaffirmation (or rediscovery) of their cultures and spirituality."[38]

Aboriginal languages at risk

In 1994, an Assembly of First Nations study of the impact of residential schools noted that "language is necessary to define and maintain a world view. For this reason, some First Nation Elders to this day will say that knowing or learning a native language is basic to any deep understanding of a First Nations way of life, to being a First Nation person. For them, a First Nation world is quite simply not possible without its own language."[39] This same report quoted Bernie Francis, a Mi'kmaq linguistic consultant, who stated, "the greatest part of our spirituality is embedded in our language. That is why it was attacked with such vigor."[40]

The Royal Commission on Aboriginal Peoples similarly noted the connection between Aboriginal languages and what it called a "distinctive world view," rooted in the stories of ancestors and the environment:

> For Aboriginal people, the threat that their languages could disappear is more than the prospect that they will have to acquire new instruments for communicating their daily needs and building a sense of community. It is a threat that their distinctive worldview, the wisdom of their ancestors and their ways of being human could be lost as well. And, as they point out, if the languages of this continent are lost, there is nowhere else they can be heard again.[41]

RCAP added that Aboriginal languages are a "tangible emblem of group identity" that can provide "the individual a sense of security and continuity with the past ...

Maintenance of the language and group identity has both a social-emotional and a spiritual purpose."[illegible]

The deep cultural and spiritual significance of Aboriginal languages was also reflected in some of the first principles that guided an important 2005 Task Force on Aboriginal Languages. The task force included speakers of the Michif, Secwepemc, Mohawk, Inuktitut, Cree, Plains Cree, Swampy Cree, Saulteaux, Ojibway, and Algonquin, and drew on a Circle of Experts. The task force articulated its core principles thusly:

> We believe First Nation, Inuit and Métis languages embody the past and the future. To enter into a relationship with our ancestors we must speak our languages and by doing so we honour their spirits. However, we also adapt our languages to new environments, new situations and new technologies.[illegible]

Aboriginal languages have survived. But only barely. Very few Aboriginal languages are in good health today. The largest and "most viable" languages are Inuktitut, Cree, and Ojibway, but all Aboriginal languages spoken in Canada are considered vulnerable to extinction.[illegible] In 1998, the Assembly of First Nations declared a state of emergency regarding First Nation languages, and called on Canada to act immediately to recognize, officially and legally, the First Nation languages of Canada, and to make a commitment to provide the resources necessary to reverse First Nation language loss and prevent their extinction.[illegible] That call was never answered. Since that time, things have become critically worse. In the 2011 census, only 14.5% of the Aboriginal population reported that their first language learned was an Aboriginal language.[illegible] In the previous census in 2006, 19% of those who identified as Aboriginal had reported an Aboriginal language as their first language learned, and a decade earlier, in the 1996 census, the figure was 26%. Although some of this decline may reflect the growth in the number of people now identifying as Aboriginal, especially off reserve, the rapid decline in those who learn an Aboriginal language as a first language is dramatic and significant.

In the 2006 census, 21% of those who reported an Aboriginal identity also reported the ability to conduct a conversation in an Aboriginal language; in the 2011 census, this proportion declined to 17.2%, a drop of 4% in just five years.[illegible] Again, some of this decline may be explained by the growth in the overall Aboriginal population, but there are plenty of consistent, disturbing signs that Aboriginal languages are in danger of disappearing completely.

There remains great diversity in language use among Canada's Aboriginal peoples. Fewer than 5% of Métis people speak an Aboriginal language, although about 50% report that keeping, learning, or relearning their language is important to them. Some of the languages spoken by Métis people, such as Cree and Ojibway, are in good health, but others, such as Michif, are spoken by fewer than one thousand people.[illegible]

Nearly two-thirds of Inuit speak their own language, compared to 22.4% of First Nations people. Although the Inuit have the highest percentage of Indigenous language speakers, there are signs of decline there as well. In the 2011 census, 63.3% of their population spoke an Inuit language, down from 68.8% in the 2006 census.

There are also striking regional differences, with much lower rates of language use by Inuit in urban areas as well as in the western, Inuvialuit region of the Northwest Territories, where church-run residential schooling, commercial whaling, and fur trading had more than a century-long history.[illegible]

Constitutional guarantees

Canada prides itself on its official bilingualism and is admired internationally for this policy. Yet there is no comparable policy of official trilingualism to equitably honour and encompass the mother tongues of the country's third founders, the Aboriginal peoples of Canada.

The Supreme Court of Canada has interpreted section 35 of the Canadian Constitution (which recognizes Aboriginal and Treaty Rights) as protecting those Aboriginal rights that "were integral to the distinctive culture of the specific aboriginal group" prior to European contact.[illegible] There can be no doubt that Aboriginal languages and cultural practices fall within the scope of such constitutional protections.[illegible] The practice of Aboriginal languages was a pre-existing, distinctive, and continuous practice that should be recognized as an existing Aboriginal right under section 35(1) of the *Constitution Act, 1982*.[illegible]

In the words of Supreme Court of Canada Chief Justice Beverley McLachlin in the case *R v. Mitchell*, "European settlement did not terminate the interests of aboriginal peoples arising from their historical occupation and use of the land. To the contrary, aboriginal interests and customary laws were presumed to survive the assertion of sovereignty, and were absorbed into the common law as rights."[illegible] As a result, Aboriginal language rights continue to exist as part of the Aboriginal rights protected within Canada's guiding law, the Canadian Constitution. They have survived unless, as Chief Justice McLachlin wrote in *R. v. Mitchell*, "(1) they were incompatible with the Crown's assertion of sovereignty, (2) they were surrendered voluntarily via the treaty process, or (3) the government extinguished them."[illegible] Because Aboriginal languages do not threaten the Crown's assertion of sovereignty, and were not surrendered through Treaties, and were not extinguished by the government, the rights to these language practices, customs, and traditions continue to this day.

It can also be argued that because Treaty talks were conducted in both English and Aboriginal languages, both parties assumed that they would continue to communicate in a similar manner. Given that Aboriginal peoples owned the land by virtue of their historic use and occupancy, and exercised governance powers prior to European arrival. Treaties should be fairly understood as a grant of rights from First Nations to the Crown, leaving First Nations to still hold any and all rights not granted to the Crown, including language rights.[illegible] This obviously leaves broad grounds for Aboriginal language rights to be recognized and affirmed within section 35(1) of the Constitution.

The Supreme Court of Canada, in the course of interpreting French and English minority language rights under the *Canadian Charter of Rights and Freedoms*, has clearly stressed the importance of language as part of culture. The Court has written,

> Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is a means by which a people may express its cultural identity. It is also the means by which one expresses one's personal identity and sense of individuality.[illegible]

Finally, section 22 of the *Canadian Charter of Rights and Freedoms* provides that the recognition of French and English language rights in the Charter does not take away "from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French."[illegible] This section of the *Charter* provides support for the idea that Aboriginal language litigation could be successful under section 35 of the *Constitution Act, 1982*.

In interpreting Aboriginal and treaty rights under section 35(1) of the *Constitution Act, 1982*, the Supreme Court of Canada has stressed the relation of those rights to the preservation of distinct Aboriginal cultures.[illegible] The Commission is convinced that Aboriginal languages are an integral part of Aboriginal culture, no less than English and French languages are to those cultures, in that they help define how Aboriginal peoples govern and educate themselves and relate to their environment.

(g) We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.

Preserving Aboriginal languages

The residential school system was based primarily on the racist belief in the superiority of whites and the inferiority of Aboriginal cultures. Yet, despite the frequent use of various forms of punishment, students resisted attempts to prohibit their use of Aboriginal languages in many ways. In 1887, Reverend T. Clarke of the Battleford Industrial School complained that "We have experienced a great difficulty in inducing

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The Royal Commission on Aboriginal Peoples

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Aboriginal Languages Initiative (ALI)

[illegible]

the Assembly of First Nations, the Métis National Council, and the Inuit Tapiriit Kanatami. Leaving aside the adequacy of the dollar amounts, this approach recognized that a government-controlled approach did not respect the diversity of Canada's Aboriginal peoples, especially given the diversity of Aboriginal languages. The approach also responded to criticism that language policy should be a key component of Aboriginal self-determination. It would mean that the Aboriginal organizations, although funded by Canada, would themselves be responsible and held accountable for their decisions for the ways they directed resources to the support and of language preservation.

Unfortunately, Canada no longer pursues such a nation-to-nation approach. The present approach is based on federal administration of heritage subsidies. In 2002, the federal government declined to use the $160 million that had been set aside for the creation of an Aboriginal Languages and Culture Centre and a national language strategy. Instead, the government committed $5 million per year "permanent funding" for the Aboriginal Languages Initiative. Aboriginal language initiatives are now delivered by the Department of Canadian Heritage on a project-by-project basis. The heritage subsidy approach suggests that Aboriginal languages will, at best, be preserved with other relics of the past.

Even if one were to set aside the significant reduction in funding, it is important to understand that the Aboriginal Language Initiative made matters much worse. It is a program of government-administered subsidies. It is not based on the notion of respectful nation-to-nation relations between Canada and Aboriginal peoples, nor does it trust Aboriginal people to make decisions for themselves about how to allocate these few resources and how to administer programs. Evaluations have identified gaps in funding, especially for Métis people, urban, and non-status First Nations people, and urban Inuit. These groups include many former students of residential schools and their children and grandchildren.

The Aboriginal Language Initiative budget remains $5 million per year, just as it was more than seventeen years ago in 1998 when the program was initiated. Given inflation, this funding has dramatically decreased in real terms. In 2011–12, this budget was used for [illegible] projects, which were funded by way of "contribution agreements" with national, provincial, and regional Aboriginal organizations; no funding is available for programs that are designed and delivered by Aboriginal people. They can only on a short-term project basis. The Aboriginal Languages Initiative is financially unfit for its purposes and structurally flawed.

Apart from the Aboriginal Languages Initiative, the only other significant programs for language preservation are the Canada–Territorial Language Accords (with their annual budgets). These support territorial government-directed Aboriginal language services and community projects in Nunavut and the Northwest Territories. In Yukon, Canada provides $1 million for language revitalization and preservation

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Act creates a commission with such powers related to the promotion of that Indigenous language.[illegible]

The auditor general of Canada has written about the federal government's failure to create clarity about the service levels First Nations receive. In his 2011 status report, he wrote, "It is not always evident whether the federal government is committed to providing services on reserves of the same range and quality as those provided to other communities across Canada."[illegible] In fact, First Nations receive significantly fewer dollars per capita than non-Aboriginal groups when it comes to basic government services. The auditor general has also asserted that First Nations cannot effectively plan and control the delivery of their services because the federal government has not created a legislative base to hold itself accountable in dealing with Aboriginal peoples. He wrote,

> Therefore, for First Nations members living on reserves, there is no legislation supporting programs in important areas such as education, health, and drinking water. Instead, the federal government has developed programs and services for First Nations on the basis of policy. As a result, the services delivered under these programs are not always well defined and there is confusion about federal responsibility for funding them adequately.[illegible]

The auditor general's findings exemplify the need for the certainty of federal legislation to ensure the effectiveness of remedial and ongoing action on Aboriginal languages.

Provincial and territorial initiatives

Some provinces and territories in Canada have made progress through legislation and other measures that focus on the official status of Aboriginal languages within their jurisdictions. First Nation and Inuit languages in the Northwest Territories[illegible] and Nunavut[illegible] have been designated as official languages. Nunavut has an *Inuit Language Protection Act* (2008) that includes a legal statement of the inherent right of the Inuit in Nunavut to use their language.[illegible] Since 2002, Yukon legislation has recognized the importance of Yukon Aboriginal languages and expresses a wish to take appropriate measures to "preserve, develop and enhance" those languages.[illegible]

British Columbia has legislation providing for a First Peoples' Language, Heritage and Culture Council, tasked with providing support and distributing funds to heritage and arts organizations.[illegible] An accompanying regulation recognizes thirty-four distinct First Peoples' languages.[illegible] Several provinces have legislation that formally recognizes First Nation languages but with no concurring obligation to protect or promote such languages. For example, the 2010 Manitoba *Aboriginal Languages Recognition Act* recognizes that the languages of Cree, Dakota, Dene, Inuktitut, Michif, Ojibway, and

Oji-Cree are "the Aboriginal languages spoken and used in Manitoba," but it does not legislate official language status or obligate the province to take steps to protect and promote these languages.[illegible]

In Québec, Aboriginal children are exempted from French-language educational service requirements in order to permit them to receive instruction in their own languages.[illegible] The preamble of the *Charter of the French Language* recognizes the rights of "Amerinds [*sic*] and the Inuit of Québec, the first inhabitants of this land, to preserve and develop their original language and culture."[illegible] The official languages of instruction for schools under the jurisdiction of the Cree (Cree School Board) and Inuit (Kativik School Board) are Cree and Inuktitut, respectively. In addition, "Indian reserves" are not subject to the requirements of the *Charter of the French Language*.[illegible] None of the other provinces have any legislation officially addressing the status of Aboriginal languages.

The Commission concludes that the Government of Canada should establish a framework for a new commitment to respecting, preserving, and strengthening Aboriginal languages by enacting an Aboriginal Languages Act that is similar to the *Native American Languages Act* enacted by the US Congress. The Act should recognize that residential schools were part of a forced policy of linguistic assimilation, and affirm both Aboriginal and Treaty rights and the *UN Declaration on the Rights of Indigenous Peoples*.

14) We call upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:

    i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.

    ii. Aboriginal language rights are reinforced by the Treaties.

    iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.

    iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.

    v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages.

15) We call upon the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives.

Redressing the harms

Canadian governments and the churches that ran residential schools have special obligations to assist in the retention of Aboriginal languages because of their past shared policies of forced assimilation. The United Church's 1986 apology acknowledged the church's responsibility for harm caused by forced assimilation: "We imposed our civilization as a condition for accepting the gospel. We tried to make you be like us and in so doing we helped to destroy the vision that made you what you were. As a result you, and we, are poorer and the image of the Creator in us is twisted, blurred, and we are not what we are meant by God to be."[95]

The Presbyterian Church's 1994 apology sought forgiveness for the church's complicity in banning "some important spiritual practices through which Aboriginal peoples experienced the presence of the creator God" as well as for other practices that lead to "the loss of cultural identity and the loss of a secure sense of self" for former students.[96]

During a private meeting at the Vatican in 2009, Pope Benedict XVI expressed "sorrow" to a delegation from the Assembly of First Nations over the abuse and "deplorable" treatment that Aboriginal students suffered at residential schools run by the Roman Catholic Church, but he did not address the loss of language and culture.[97] No formal and public apology has been made on behalf of the Catholic Church as an organization, although some individual Catholic organizations have made apologies, such as the Missionary Oblates of Mary Immaculate, which apologized for its role in attempts to "assimilate aboriginal peoples" through residential schools.[98] In one example of a particular diocese accepting responsibility, Bishop Murray Chatlain of the Roman Catholic Diocese of Mackenzie-Fort Smith in the Northwest Territories acknowledged in 2009 that "We participated in a system that sought to strip away aboriginal language and culture."[99]

It is important that the churches that ran the residential schools recognize that the purpose of the schools was assimilation and that language and cultural loss was one of the most damaging features of residential schools, and of similar policies of assimilation pursued in other schools. At the same time, apologies can only be a meaningful prelude to reconciliation if tangible steps are taken by the churches to help repair the damage they caused. This is particularly necessary given that residential school Survivors have not succeeded in obtaining compensation for lost language and culture through the courts.

The legal pursuit of compensation

Residential school Survivors have insisted that claims for loss of language and culture be a part of their many lawsuits against the Government of Canada and the churches. Both the government and the churches have aggressively opposed such claims. Even if the law recognized that Aboriginal language and culture loss was something that could be valued, the government and the churches argued that Survivors had waited too long to make their claims.

Claims about loss of language and culture were important for many Survivors. One former student at the Duck Lake, Saskatchewan, school alleged in a lawsuit that he was forcibly removed from his people, punished for speaking Cree, and prohibited from engaging in Aboriginal dancing, cultural, or religious activities. The Saskatchewan Court of Appeal dismissed his claim on the basis that he had not sued public authorities within one year after leaving school, and that his allegations did not amount to a breach of fiduciary duty or trust.[100]

Frederick Lee Barney sued the United Church and the Government of Canada in one early case that went to the Supreme Court of Canada. He recovered damages for being sexually assaulted but not for loss of language and culture, despite his powerful testimony, in which he explained,

> I was deprived of the love and guidance of my parents and siblings for five years. I lost my Native language and Aboriginal culture and was removed from my family roots. The enormity of the loss of both my culture and my connection with my family feels overwhelming and the effects irreversible. I lost my identity as a Native person. I live with a sense of not knowing who I am and how I should be in the world. I lost the friendship and support of my friends and community. I suffered a loss of self-esteem.... I'm angry about my loss of culture ... It's sickening. It was obvious the tremendous effect it has had on me as a person and yes, I get angry as hell.[101]

The trial judge in that case held that the federal government and the United Church did not engage in a breach of trust or a breach of fiduciary duty because they were candid and not dishonest about their plan to assimilate Aboriginal people.[102] The Canadian legal system did not hear Survivors when they said in the lawsuits that the treatment of Aboriginal languages and cultures in the schools was wrong and the language and culture that was lost was valuable.

The Common Experience Payments (CEP) arising from the Settlement Agreement provided recognition of an individual's loss of language and culture for those who could establish that they attended listed residential schools. Such payments, however, ignored the collective and intergenerational harms that have struck at the very core of Aboriginal identity. It is essential to understand, based on almost every statement the Commission received from almost seven thousand Survivors from every region of this country, that all of these losses are interconnected. These statements tell of devastating cumulative damage to Survivors, children, and grandchildren. This damage has also contributed to contemporary realities that add up to a significant financial, social, and reputational cost to Canada. It is not at all clear to this Commission why Aboriginal language and culture loss could not be recognized in Canadian courts.

The 2005 federal Task Force on Aboriginal Languages warned that the government's past policies towards Aboriginal languages, most notably the policies used in residential schools, could be viewed as a violation of Aboriginal and Treaty rights as well as the fiduciary duties that government had with respect to the children taken, and to Aboriginal people generally. The Task Force concluded,

> In our view, forcibly removing language and culture from individual First Nation, Inuit and Métis people is tantamount to a breach of Aboriginal and Treaty rights, as well as a breach of the Crown's fiduciary duty, and should therefore be compensable. It is also our view that Canada's refusal to compensate individuals who continue to suffer the devastating effects of their loss of connection to their communities and their languages, cultures and spiritual beliefs, fails to uphold the honour of the Crown. Further, this refusal has the effect of appearing to relegate First Nation, Inuit and Métis languages to the position of subjugated languages that can be forcibly removed from the memories of the people who spoke them, with impunity. Canada has taken the view that, while language is the collective right of a community or language group, compensation for loss of language will be a programmatic response to communities and language groups. We believe Canada's position to be fundamentally wrong. Government funding of First Nation, Inuit and Métis languages must be made on the basis of their constitutional status and should not be viewed as arising as part of the compensation for legitimate claims for damages that arise from wrongs committed against many individuals.[103]

The Task Force found that the revitalization and preservation of First Nations languages must be done by First Nations themselves. Canada has a duty to provide the resources necessary to restore First Nation, Inuit, and Métis languages and cultures.

The essential value of Aboriginal cultures was again emphasized in a 2014 ruling in Ontario. In *Brown v. Attorney General of Canada*, a class action has been "certified" (and thus permitted to proceed) relating to the large-scale removal of Aboriginal children by child welfare authorities between 1965 and 1984. In refusing the federal government's attempt to have the case thrown out, the Ontario Superior Court recognized that the case raises important issues about connection to culture and the harm of separation from one's Aboriginal heritage:

> Here we are not dealing with just one aspect of that culture. Here we are dealing with a person's connection to that culture as a whole. It is difficult to see a specific interest that could be of more importance to aboriginal peoples than each

> person's essential connection to their aboriginal heritage. In addition, on this point, the importance of aboriginal rights cannot be disputed.[104]

United Nations Declaration on the Rights of Indigenous Peoples

The *United Nations Declaration on the Rights of Indigenous Peoples* makes one of the most powerful and persuasive cases for governments to make reparations for forced assimilation. It recognizes Aboriginal languages as a vital part of Indigenous cultural rights. During the same time period that Canada supported and endorsed this important international declaration, it has backtracked on promises of increased funding for Aboriginal languages, and has treated Aboriginal languages as a minor part of a larger governmental portfolio devoted to all matters of Canadian heritage. Many provisions in the UN Declaration make clear that Canada has obligations to change course and to provide redress for its past policies.

Article 8 of the declaration recognizes that "Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture." Article 8(2) then provides that "states shall provide effective mechanisms for prevention of and redress for any form of forced assimilation or integration." As suggested throughout this volume, residential schools constituted a most pernicious form of "forced assimilation." The linguistic policies pursued in the schools are among the worst forms of forced assimilation. Even if the modest payments of compensation to individuals in the form of the Common Experience Payment are seen as a form of individual reparation, Canada has not taken the kinds of steps that would be necessary to reverse the collective loss of language and culture that was the intended consequence of the residential schools. In the absence of such steps, redress has not occurred.

Article 13(1) of the UN Declaration recognizes that "Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons." Article 14(1) similarly provides that "Indigenous peoples have the right to establish and control their educational systems and institutions *providing education in their own languages*, in a manner appropriate to their cultural methods of teaching and learning," and article 14(3) makes such rights real by providing that "States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language."

Article 16 provides that Indigenous peoples "have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination" and that states "shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity."

Article 19 is a critical provision in the declaration because it requires Canada to consult and cooperate in good faith with Indigenous peoples in order to obtain their consent prior to implementing legislative or administrative measures that may affect them. As a result, Canada cannot impose solutions upon Aboriginal peoples, but must work with Aboriginal peoples to implement its international obligations.[105]

Finally, it is difficult to reconcile the refusal of courts to acknowledge the loss of language and culture as being compensable with the very important principle that such acts could constitute acts of genocide an acknowledged crime against a racial group in breach of the *UN Convention on Genocide*.[106]

This Commission has found that the actions of the federal government in attacking and attempting to destroy Aboriginal cultures and languages, not only in residential schools but in Aboriginal communities through ceremonial prohibitions in the *Indian Act*, amounted to cultural genocide. The term *cultural genocide* is not found in the *UN Convention on Genocide*, and an analysis of the evolution of the Convention prior to its adoption by the United Nations shows that inclusion of the term was rejected. Nonetheless, while the term *genocide* generally refers to the physical destruction of members of a racialized group, the Convention contains provisions that appear to contemplate criteria other than immediate physical destruction. For example, article 2 of the Convention states,

> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.

Clearly, articles 2(d) and 2(e) do not require that the victims themselves be "destroyed" but that the measures taken against them be intended to result in the destruction of the "national, ethnical, racial or religious group, as such."

The forcible sterilization of women and girls for the purpose of preventing their group from repopulating itself would be an act of genocide, even though the individual female victim would be allowed to live. The forcible removal of children from their racial community in order to be indoctrinated into another racial community and thereby "destroy" their original group would likewise be an act of genocide, even though the children themselves continued to live as members of the new group.

It is the Commission's view that if Canada were to attempt to do today what it did in the nineteenth century through residential schools, it could face severe international consequences.

It seems logical to conclude that Canada's actions in forcibly transferring Aboriginal children from their racial group to another in order to eliminate or destroy their cultures and languages—and therefore their racial group—could at least amount to a legal wrong cognizable in Canadian law because of Canada's acceptance of it as a legal wrong in international law. No court has so held; nor as a Commission can we make a definitive finding on the point. The way does seem clear, however, for such legal recognition to be made at some point in the future.

The Commission concludes that the Aboriginal peoples of Canada have language rights tied to their rights under Canadian constitutional law, their rights under international law, and their legitimate claims to collective reparation for forced assimilation in the residential schools.

The Commission calls for a new approach from the Canadian government, an approach that must restore the right of Aboriginal communities to pursue the language and cultural initiatives that best reflect their own circumstances. This should be done, wherever possible, on a nation-to-nation basis, along the lines of the Yukon model where the government provides language funding to self-governing nations. A pan-Aboriginal approach is inappropriate given the diversity of Canada's Aboriginal communities, their relative access to supportive resources, and the differences in the current health of the Aboriginal languages used in Canada.

The importance of Aboriginal languages and culture to non-Aboriginal Canadians

The neglect of Aboriginal languages affects all Canadians. It impedes the ability of non-Aboriginal Canadians to understand and to appreciate the linguistic and cultural diversity that is part of a shared history. The language and culture of all Canadians is infused with the words and the history of Aboriginal peoples. Too easily people forget that proper names such as *Québec* and *Saskatchewan* and everyday words such as *chipmunk* (Odawa) and *moose* (Ojibway) are gifts from Aboriginal people and their ancestors.

However, there is much more for non-Aboriginal Canadians in a broader appreciation of the value of Aboriginal languages. For example, the Anishinaabe word *[illegible]* is used to describe a time in the Ontario spring when cold and warm air masses intermingle and cause fine mists to rise over the earth. The snows melt and the waters start to flow at this time. The Anishinaabe word for forgiveness is a related word: *aabawaawendiwin*. It describes a process in which we loosen our thoughts towards others and let relationships flow more easily, becoming warmer towards each other.[illegible] Other Aboriginal languages throughout Canada hold similar examples of wisdom and beauty.

Non-Aboriginal Canadians should also care about the damage done to Aboriginal languages and cultures because their government has apologized to Aboriginal peoples on their behalf. Canada's 2008 apology for residential schools recognized explicitly that the schools were based on a "policy of assimilation" that "caused great harm, and has no place in our country." It specifically recognized that the schools "had a lasting and damaging impact on Aboriginal culture, heritage and language."[illegible]

There can be no real prospect for reconciliation if that apology is not seen as sincere and accompanied with a commitment to address the wrongs that prompted the apology in the first place. Those who have stolen something valuable cannot expect their apology to be believable and acceptable without the return of what was stolen, or a mutually agreeable level of compensation. In the case of residential schools, the apology is a moral commitment on the part of the Government of Canada to support the health of Aboriginal cultures and languages.

Reclaiming names

As a result of the residential school experience, many Aboriginal people lost their language and lost touch with their culture. Many also suffered a loss of a different sort. It was common for residential school officials to give students new names. At the Aklavik Anglican school in the Northwest Territories, a young Inuit girl named Masak was called Alice—she would not hear her old name until she returned home.[illegible] At the Qu'Appelle school in Saskatchewan, Ochankugahe (Path Maker) became Daniel Kennedy, named for the biblical Daniel, and Adélard Standing Buffalo was named for Adélard Langevin, the archbishop of St. Boniface.[illegible] Survivors and their families who have sought to reclaim the names that were taken from them in residential schools have found the process to be both expensive and time consuming. The Commission believes that measures should be put in place to reduce the burden placed on those who seek to reclaim this significant portion of their heritage.

17) We call upon all levels of government to enable residential school Survivors and their families to reclaim names changed by the residential school system by waiving administrative costs for a period of five years for the name-change process and the revision of official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers.

The way forward

Aboriginal knowledge

Residential school Survivors do not need reports or studies to tell them that recovering their stolen cultures can assist them on their healing journey. They know this from their own experiences. Isabelle Knockwood, who attended the Shubenacadie school in Nova Scotia, writes of recovering spirituality: "Many of us have returned to a traditional path as the source of our strength.... Some of us have come to realize that we were abused not only physically but spiritually. For us, the Native Way with its Sacred Circle and respect for all living things is a means of healing that abuse."[11]

The Commission heard many stories from Survivors about their early experiences with Aboriginal language and how learning language connected them to family and to place. Paul Stanley talked about this connection at the Commission's community hearing in Duncan, British Columbia:

> When you're in bed with papa, and he tells you about your first story, and it's about how the chipmunk got his stripes, and it was so funny to me, you know that I asked him every night to say it again, you know, and, and, and those things helped, too. And if I didn't know a word, he'd let me know.... And so that's how language is taught at home, in my place.... And it's not by a desk or anything like that, which is okay, you know, other systems work anyway, but that's how we started, so that was my life, you know, like to learn the language, and maybe a bit of culture.[12]

Esther Lachinette-Diabo echoed that sentiment in Thunder Bay, Ontario:

> I feel free to be able to speak in Ojibway, and I talk about the culture because I experienced it when I was a kid. I've seen my grandparents; I've seen my uncles; and I've seen medicine people come to our community, eat together, and do their ceremonies. I can talk about those from first-hand experience.[13]

Mathilda Lampe vividly remembers the day her younger sister first spoke to her father in Inuktitut at their home in Labrador:

> At our supper table dad, Doris said to dad, "qanuinivit?" [How are you?] Oh my God everybody just, like we all got quiet like this; just myself and Doris and my mom and dad. My dad put his food down; he got up and oh my God that was the best ever. My dad, my dad got up off his chair and went over to Doris; me and my mom were just looking at each other like, like myself like, thinking for the worst. She's going to be hit; she's going to be smacked something.
>
> That was the best supper ever. My dad got up and went over to Doris and hugged her; first time ever and he actually took her, hugged her. He sat down and looked at Doris, nakummek [thank you] ... oh my God, that was the best

> [illegible]

Case studies

The Aboriginal cultures and languages that were damaged are actually even more precious today for as battered and broken as they are, they hold the seeds for rejuvenation. The Survivors know that the recovery of language and culture was and remains critical for their own individual healing and for the health of Aboriginal families and communities in the future. Many of the Survivors explained to the Commission how they reconnected with Aboriginal languages and cultures as the most powerful and restorative part of their very difficult healing journeys.

Many remedies to the loss of language and culture have already been tested by different Aboriginal peoples across the country. These solutions, however, need support and encouragement from governments and churches, and support has not been forthcoming.

British Columbia

British Columbia has the greatest diversity of Aboriginal languages, having [illegible] of the [illegible] Aboriginal languages spoken in Canada, according to [illegible]. However, it accounts for only [illegible] of the country's Aboriginal mother tongue population because of the small speaker populations.[illegible] The [illegible] census reported that BC is home to [illegible] different Aboriginal languages but that most of these languages have less than [illegible] people each.

For example, there are [illegible] recorded speakers of [illegible], and [illegible] recorded speakers of [illegible].[illegible] British Columbia has some of the smallest and most endangered Aboriginal mother-tongue populations, including the Salish family ([illegible]), the Tsimshian family ([illegible]), the Wakashan family ([illegible]), Kutenai isolate ([illegible]), Haida isolate ([illegible]), and Tlingit ([illegible]).[illegible] In [illegible], second language learners accounted for over half the speakers of Tlingit, Haida, and smaller Salish languages.[illegible]

A [illegible] study by the First Peoples' Heritage, Language and Culture Council observed that the teaching of First Nations languages in schools in BC is "too limited to have any great effect" and has predicted that most fluent speakers of Aboriginal languages in BC may be gone by as early as [illegible].[illegible]

The [illegible] Nation is one of many British Columbia First Nations that is taking steps to revitalize and preserve its languages. The [illegible] Nation spans the Fraser Valley and is comprised of eleven member First Nations: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

> [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]
- [illegible]

[illegible]

This multi-pronged approach recognizes that languages must be supported if they are to survive and thrive. Despite the fact that Inuktitut is an official language of the territory of Nunavut, the funding available to support the language is far inferior to the funding for French language services in Nunavut. The federal government provides support to the small minority of francophones in Nunavut in the amount of approximately $4,000 per individual annually. In contrast, funding to support Inuit language initiatives is estimated at $44 per Inuk per year.[illegible] Although Inuktitut is healthier than most *Aboriginal* languages, and language policy at the territorial level is robust, Canada could do much more to promote such languages, especially in a region that only the Inuit can claim is truly their homeland.

The Commission finds that the preservation and revitalization of *Aboriginal* languages is a necessary and constructive reparation for the attack on *Aboriginal* languages and cultures in the residential schools and in Canadian society. It also concludes that retention of *Aboriginal* languages could provide Canada with vital social capital to enrich our understandings of the environment, health, culture, justice, and governance.

The Commission finds that there is a willingness and ability among *Aboriginal* people to undertake the rewarding work of learning *Aboriginal* languages. The Commission recognizes that there are enormous differences in the current use of *Aboriginal* languages among Inuit, First Nations, and Métis, and geographically within those groups. It is clear to the Commission that a one-size-fits-all approach to language will not work.

Community-based responses

There is a need for Canada's *Aboriginal* peoples to pursue their own language policies in a way that is appropriate for their own distinct situations. RCAP outlined a very practical approach to preserving and strengthening *Aboriginal* language, proposing an eight-stage process for language revitalization, with use of languages in government as only the seventh and eighth phases. It emphasized the importance of the communities themselves reconstructing language, mobilizing older fluent speakers, restoring intergenerational transmission through families and community.

The stories, the songs, the languages that we learn from our families as children influence how we go on to live in the world. This nurturing role in the transmission of beliefs was taken from *Aboriginal* parents when their children were forced into residential schools. That role must be restored and honoured. The Commission has been convinced by the testimonials from Survivors, as well as by the social science evidence, that the best way to restore *Aboriginal* languages and cultures is by ensuring that families and communities are the focal point for learning.

There are many possible models and no one size will fit all. As RCAP recognized, the best way to revitalize and preserve culture, including language, is to ensure that it is part of everyday life and passed on to children from a young age. As a teacher with the Secwepemc First Nation observed,

> Our children need the opportunity to hear our languages so that they can go to sleep with our language, they could hear their grandfather speaking the language, they could hear their grandmother speaking the language, they could hear and dream in the language. And I think, too, I have a belief that when we are in our sweats [sacred ceremonial lodges], if we're going to meet our ancestors wouldn't it be beautiful to be conversing in the language as the Creator has gifted us? … Our children will be going to those levels, too, because they'll be going and meeting our ancestors and be able to understand and make sure our messages and our teachings are not lost."[110]

However, very few Aboriginal families and communities are in a position to be able to employ effective measures for language preservation. This is especially the case as fluent speakers become elderly and are not being replaced by younger generations. Loss of language will also challenge the ability of communities to impart cultural knowledge.

Yet many Aboriginal people are rising to the challenge. In the face of great odds, we are witnessing an upsurge in innovative community-based and community-controlled initiatives to revitalize and preserve culture and language. These initiatives include local development of language classes in schools; language preservation through writing and audio and video recordings; Aboriginal media on radio, TV, and the Internet; as well as cultural classes and immersion programs. These initiatives must be permitted to flourish and grow, with the choice about how to go about this important work ultimately belonging to the communities themselves. The TRC has been able to encourage and witness some of these efforts through our role in recommending funding for proposed commemoration projects.

Language nests

"Language nests" provide one interesting model that has been used with success internationally. The nests have been adopted by a number of Aboriginal communities here in Canada. They can ensure that language and culture are part of the everyday life of children from a young age, even if their parents are not fluent speakers. There are different models but, generally, preschool children as young as six weeks of age spend their days immersed in their Aboriginal language and culture in a home-like environment. Ideally, children then transition to an immersion school available in the community.

There are a number of language nests in British Columbia and the Northwest Territories.[144] Some began simply because one or two individuals in the community took the initiative and made it happen. As one administrator from a BC language nest observed,

> People can walk in and say, "Wow, this is easy"... because all we're doing is inviting children over to grandma's house and speaking the language all day and playing with them. There's no mystery to that.... We go down to the lake and we play with logs and we put rocks on logs and we make those into canoes, we go out into the fields and we play with the flowers and we make flower wreaths and stuff ... We don't need to overcomplicate it. I think that's what people tend to do. They overcomplicate the whole thing. We forget that children need love and nurturing, they need positive reinforcement, they need acceptance, they need to be safe, they need healthy food, there's real basics that we need to do, we don't need to worry about too many other things. In a nutshell, that's what I think a language nest is.[145]

The language nests do more than simply teach language. They also ensure that children learn about their cultures, beliefs, practices, and songs. Traditional drumming and dancing are often incorporated, and one community introduced the practice of using traditional names for the children. Interviews conducted as part of a study of language nests in BC suggest that children who participated "better appreciated their history, identity, and traditions."[146]

In addition to inspiring children, language nests can also assist parents. They can learn the language from their children as they come home and talk about what they have learned. The children then become teachers themselves and valuable resources for the community. The community itself may find that connections are made, especially with Elders and others who must be fluent in the language in order to run language nests; these connections also provide social and linguistic capital that will assist the community. In one community, the first children who went through the language nest and then K–7 immersion have now graduated from high school and work at the immersion school as curriculum developers. One of the teachers reported that she has conferred with these past graduates (who are now young adults) on certain words or concepts that she does not know. She respectfully referred to them as her "little Elders."[147]

Unfortunately, the barriers and obstacles to developing such programs can seem enormous. An evaluation in the Northwest Territories identified many hurdles: a lack of administrative capacity, staffing challenges, a lack of fluent speakers, low or no wages, lack of core funding, lack of space, licensing requirements, and the lack of curriculum and materials.[148] Again, these challenges underline the importance of giving Aboriginal communities the powers and the funding they need.

Aboriginal languages as second languages

Although Aboriginal languages are best preserved when they are learned in the home as a first language,[149] both the state of Aboriginal languages in Canada and the desire of many to reconnect with their cultures suggest that more support should be given to learning Aboriginal languages as a second language.

To begin with, many mother-tongue populations are aging beyond childbearing years; and second, for most children the ideal family and community conditions for mother-tongue transmission are becoming the exception rather than the norm. Demographic data show that the children most likely to learn an Aboriginal language as a second language are from linguistically mixed families and live in urban areas.[150] Approximately 22% of Aboriginal people who reported to the 2011 National Household Survey that they could conduct a conversation in an Aboriginal language had learned it as a second language. That proportion varied from 35.3% for Métis to 23.1% for First Nations people to 10.2% for Inuit.[151]

There is also a demand among Aboriginal people for such language training. According to the 2001 Aboriginal Peoples Survey, parents of 60% of Aboriginal children in non-reserve areas believed it was very important or somewhat important for their children to speak and understand an Aboriginal language.

The survey report also notes that in Saskatchewan, 65% of Aboriginal adults and 63% of Aboriginal youth aged fifteen to twenty-four living off-reserve considered it important to know their language; in Yukon, 78% of adults and 76% of youth considered it important.[152]

The Commission urges all parties to the Settlement Agreement to support community-based approaches to language retention as recommended by RCAP. This may require innovative approaches to the use of Elders and others as teachers and the use of language nests and immersion programs. Schools should be flexible and responsive in their attempts to encourage the teaching of Aboriginal languages.

As a way of preserving Aboriginal languages and building broader support for national reconciliation, language instruction should be extended through post-secondary institutions. This would allow Aboriginal-language speakers to develop greater proficiency while at the same time institutionalizing language instruction in an academic context.

16) We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages.

Conclusion

The fragile state of almost all Aboriginal languages in Canada is a damaging legacy of residential schools. Although the schools contributed greatly to the decline, so too did the federal day schools and public schools, which made no room for Aboriginal languages or cultural expression. The repressive policies used against Aboriginal languages and cultures in all schools, and in Canadian society generally, were based on the view that Aboriginal languages and cultures were primitive, savage, and inferior.

It is especially regrettable that the Canadian government did not follow through in 2006 on earlier funding commitments with respect to Aboriginal languages. Those actions are a significant barrier to reconciliation. Canada's policies on Aboriginal languages are neither fiscally nor structurally sound. Funding for Aboriginal language initiatives has not increased since 1998. Canada has pursued a paternalistic policy of heritage subsidies. These are a direct rejection of RCAP's recommendation that policies designed to preserve language respect the inherent rights of Aboriginal people.

The churches, which ran so many of the schools, simply asserted that Christianity was superior to the spirituality, values, and ceremonies of Aboriginal systems. The federal government and the churches need to make collective reparation for the damage they have done to Aboriginal languages and cultures. In particular, the Government of Canada should, as recommended by RCAP, approach the funding of Aboriginal languages on a nation-to-nation basis that recognizes that language policy is a core element of Aboriginal self-determination. Such an approach should also recognize the great diversity of Aboriginal peoples within Canada, and the different needs of different communities.

The Commission would also like to emphasize that these obligations are affirmed in the Canadian Constitution and in numerous legal precedents. Canada is also a signatory to the *UN Declaration on the Rights of Indigenous Peoples*, a document that clearly sets out obligations that the Government of Canada has to make reparations for past policies, and to address the current policy and funding failures and inadequacies.

While the Commission heard many painful stories about the direct and intergenerational harm caused by the loss of language and culture, the Commissioners were heartened by the many stories we heard of resistance, resilience, and recovery. We are convinced that reconnection with Aboriginal languages and cultures will have important healing effects. Such initiatives will also increase the social and intellectual capital of Canada by preserving Aboriginal languages.

As the 2005 Task Force on Aboriginal Languages and Cultures noted, the ultimate responsibility lies with Aboriginal people:

> Canada cannot speak our languages for us. Canada cannot restore them. And Canada cannot promote them among our peoples. We must take our rightful positions as the first and most appropriate teachers of our languages and cultures.

> We must begin by speaking our own languages to our children in our homes and communities and we must do it daily. We cannot delegate this task to our schools or leave it for the next generation.[153]

At the same time, non-Aboriginal people, as represented by the Government of Canada and the churches, have moral and legal responsibilities to help repair the linguistic and cultural damages caused by their failed attempts at forced assimilation in the schools.

The recommendations of this Commission are intended to provide a guide as to how these obligations can be discharged. We hope they honourably reflect and reaffirm what Survivors have told us about the vital importance of maintaining Aboriginal languages and cultures. As Survivor Sabrina Williams so eloquently puts it,

> All things that are attached to language: it's family connections; it's oral history; it's traditions; it's ways of being; it's ways of knowing; it's medicine; it's song; it's dance; it's memory; it's everything, including the land. Because when I listen to people speak our language I can hear where, start to hear where it might have come from. So, to me ... that's another act of reconciliation—is to be able to provide that support so we can reclaim our languages.[154]

CHAPTER 4

An attack on Aboriginal health: The marks and the memories

Introduction

Thousands of Aboriginal children died in residential schools. They were killed by relentless waves of epidemics—tuberculosis and a host of other infectious diseases—that swept repeatedly through the institutions. Those children did not have to die. The spread of disease was fed and facilitated by crowded living conditions at the schools, along with a lethal combination of substandard sanitation, poor nutrition, and an appallingly low quality of medical care.

Health care services that might have been made available were often denied or caught in bureaucratic tangles between different levels of government and the churches. Prevailing attitudes of those ultimately responsible for the schools reflects coldness, indifference, and neglect that borders on the criminal, if it does not actually cross the line.

Not all students died of disease. Some students died from exposure when they attempted to run away from the schools. Some young children took their own lives rather than face another day in institutions where they lived in such despair. The students were also denied access to medical professionals who might have been available or willing to treat them. In one of the darkest stains on the history of Canada, documents show that the care of Aboriginal children in residential schools was deemed less necessary than that given to white children.

Students in residential schools were powerless to take any of their own healing measures. They were refused access to traditional foods and Aboriginal healers who might have helped them. Their families and communities were routinely excluded from decisions related to their care.

While many thousands of Aboriginal students took their injuries and infectious diseases back to their homes and communities, those were not the only burdens they carried. They also brought with them, as lessons from their schoolmasters and mistresses, the permanent scars of racism—lessons that taught them, in their most impressionable years, that they, and their parents and their ancestors, were subhuman. Aside from the physical and mental damage these students bore, they were the first to bear what was to become a multigenerational affliction, one that would affect the ability of Aboriginal peoples to embrace their languages, their cultures, and their trusted traditional healing practices. In this way, the residential school system was an attack on the health of generations of Aboriginal peoples, an attack first made visible by the physical scars of sickness and abuse, but also one that continues to punish Aboriginal peoples with a legacy of marginalized lives, addiction, mental health, poor housing, and suicide.

Ruby Firth shared her story with the Commission. She attended the Stringer Hall Anglican hostel, a residence for students in Inuvik, NWT. In her years there, she suffered seven different bouts of pneumonia, causing permanent damage to her respiratory system. She explained,

> I've got chronic bronchitis today. Every winter I get pneumonia like two or three times and I'm on two puffers 'cause when I was in Stringer Hall Residential School they used to put us in these little skinny red coats that weren't even warm enough for winter. And we used to have to walk across the street to go to school ... My lungs are 50%, both my lungs are 50% scarred from having pneumonia seven times in res. That's always going to be there, it's never going to go away.

Firth's medical records also show that she had numerous broken bones resulting from different instances of the physical abuse she suffered there. Today, she suffers from Post Traumatic Stress Disorder (PTSD):

> I didn't do this to myself. They did it to me, yet they still fall short of what I need. I'm still in need; I'm still in poverty; I'm still in a third world country. I still hurt and they're still standing by and not doing nothing about it ... I don't even make eye contact with no white person. No white person will ever make eye contact with me again; that's how much they hurt my nation ... If you raise a voice to me, "Ruby!" I'll cry. And so I try to avoid all that. I stay on my medications and stay with my family. If I go outside the circle much, people affect me and I don't like that so I don't go out; and that's what residential school did to me ... It was all directly put on me by the Canadian Government, through the queen who, who hired the churches to assimilate and I didn't do none of that.[7]

Ruby Firth is just one, of the many thousands of residential school Survivors who carries the marks, the memories, and the lasting effects of poor health care in the residential school system. The suffering of so many has also had a telling impact on subsequent generations, and that's the subject of this chapter.

The residential schools are closed. A number of them have been destroyed. Yet the legacy of those schools continues to infect the health of Aboriginal people today. This chapter begins by briefly reviewing the multiplicity of abuses, injuries, and diseases that residential school life inflicted on students and their families. It will then look at what is known about the health of Aboriginal people today, surveying a broad range of health indicators, including life expectancy, infant mortality, fetal alcohol spectrum disorder, HIV/AIDS, mental health, food and housing insecurity, addiction, and suicide.

The chapter then examines the failure of the federal government to fulfill its role in improving the health of Aboriginal people in general, Survivors, and intergenerational Survivors in particular. The chapter will also look at what is needed now and in the future to improve the health of Aboriginal Canadians. It will highlight programs and institutions that are working to bridge the health gap that exists between Aboriginal and non-Aboriginal people.

By tracing this "trail of death and disease"[illegible] back to the residential schools, the chapter will show how inequities continue today in the unconscionable political and societal acceptance of dramatically higher death, illness, suicide, and accident rates among Aboriginal peoples. It is critical that this acceptance come to an end, and soon, for it is only in good health that people will find the strength to face the truths and the opportunities for reconciliation that lie ahead.

Aboriginal health in residential schools

The exceedingly high death rate for Aboriginal children in residential schools was never a secret. In 1906, it was publicly denounced by Dr. P. H. Bryce, then chief medical officer of the Department of Indian Affairs. He wrote in his annual report that "the Indian population of Canada has a mortality rate of more than double that of the whole population, and in some provinces more than three times."[illegible] His report made national headlines, and the popular *Saturday Night* magazine concluded, "Even war seldom shows as large a percentage of fatalities as does the educational system we have imposed on our Indian wards."[illegible]

Infectious disease

Tuberculosis was the prevalent cause of death. Bryce described a cycle of disease in which infants and children were infected at home and sent to residential schools, where they infected other children. The children infected in the schools were "sent home when too ill to remain at school, or because of being a danger to the other scholars, and have conveyed the disease to homes previously free."[illegible] In 1907 Bryce published a damning report on the conditions at prairie boarding schools. In an age when fresh air was seen as being central to the successful treatment of tuberculosis, he concluded that, with only a few exceptions, the ventilation at the schools was "extremely inadequate." He found the school staff and even physicians "inclined to question or minimize the dangers of infection from scrofulous or consumptive pupils [scrofula and consumption were alternate names for types of tuberculosis] and nothing less than peremptory instructions as to how to deal with cases of disease existing in the schools will eliminate this ever present danger of infection."

Dr. Bryce gave the principals a questionnaire to complete regarding the health condition of their former students. The responses from fifteen schools revealed that "of a total of 1,537 pupils reported upon nearly 25 per cent are dead, of one school with an absolutely accurate statement, 69 per cent of ex-pupils are dead, and that everywhere the almost invariable cause of death given is tuberculosis." He drew particular attention to the fate of the thirty-one students who had been discharged from the File Hills school: nine were in good health, and twenty-two were dead.

Though Dr. Bryce was later removed from his position, he continued to denounce the Department of Indian Affairs' inaction as a "national crime." But senior government officials who dismissed Dr. Bryce's analysis went so far as to blame the Aboriginal students for their own high death rate, one of them noting in 1914 the "well known predisposition of Indians to tuberculosis."

Aboriginal children were taken from their homes and sent to residential schools in part because of beliefs "that Aboriginal parents were negligent parents and especially that unsatisfactory Native women made poor mothers." Yet the absurdity of this conclusion is now made clear by statistics that show it was the schools themselves where the children faced the greatest threats to their lives.

Unsafe buildings

For Aboriginal children, the relocation to residential schools was generally no healthier than their homes had been on the reserves. In 1897, Indian Affairs official Martin Benson reported that the industrial schools in Manitoba and the North-West Territories had been "hurriedly constructed of poor materials, badly laid out, without due provision for lighting, heating or ventilation." In addition, drainage was poor, and water and fuel supplies were inadequate. Conditions were not any better in the church-built boarding schools. In 1904, Indian Commissioner David Laird echoed Benson's comments when he wrote that the sites for the boarding schools on the Prairies seemed "to have been selected without proper regard for either water supply or drainage. I need not mention any school in particular, but I have urged improvement in several cases in regard to fire protection."

Students' health depended on clean water, good sanitation, and adequate ventilation. But little was done to improve the poor living conditions that were identified at the beginning of the twentieth century. In 1940, R. A. Hoey, who had served as the Indian Affairs superintendent of welfare and training since 1936, wrote a lengthy assessment of the condition of the existing residential schools. He concluded that many schools were "in a somewhat dilapidated condition" and had "become acute fire hazards." He laid responsibility for the "condition of our schools generally" upon their "faulty construction." This construction, he said, had failed to meet "the minimum standards in the construction of public buildings, particularly institutions for the education of children."[illegible] By 1940, the government had concluded that future policy should concentrate on the expansion of day schools for First Nations children. As a result, many of the existing residential school buildings were allowed to continue to deteriorate. A 1967 brief from the National Association of Principals and Administrators of Indian Residences, which included principals of both Catholic and Protestant schools, concluded, "In the years that the Churches have been involved in the administration of the schools, there has been a steady deterioration in essential services. Year after year, complaints, demands and requests for improvements have, in the main, fallen upon deaf ears."[illegible]

The badly built and poorly maintained schools constituted serious fire hazards. Defective firefighting equipment compounded the risk, and schools were fitted with inadequate and dangerous fire escapes. Lack of access to safe fire escapes led to a high death toll in fires at the Beauval and Cross Lake schools.[illegible]

The Truth and Reconciliation Commission of Canada has documented that at least 53 schools were destroyed by fire. There were at least 170 additional recorded fires. At least 40 students died in residential school fires.[illegible] The harsh discipline and jail-like nature of life in the schools meant that many students sought to run away. To prevent this, many schools deliberately ignored government instructions in relation to fire drills and fire escapes. These were not problems only of the late nineteenth or early twentieth centuries. Well into the twentieth century, recommendations for improvements were unheeded, and dangerous and forbidden practices were widespread and entrenched. In the interests of cost containment, the Canadian government placed the lives of students and staff at risk for 130 years.

The schools often lacked adequate facilities for the treatment of sick children. In 1893, Indian Affairs Inspector T. P. Wadsworth reported that at the Qu'Appelle school, the "want of an infirmary is still very much felt."[illegible] Those infirmaries that existed were often primitive. On an 1891 visit to the Battleford school, Indian Commissioner Hayter Reed concluded that the hospital ward was in such poor shape that they had been obliged to move the children in it to the staff dining room. According to Reed, "The noise, as well as the bad smells, come from the lavatory underneath."[illegible]

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> She sat me down on a little stool in the infirmary, and she took out some kind of a pliers-type instrument. It looked like pliers, and said, "Where is it?" I said, "Over here, up here, my last tooth on the upper right." And so she put the pliers in there, and she proceeded to pull and twist at my neck sideways, and she twisted this way, and my jaw was cracking, and she twisted, put her hand on my head here, and pulled more, and she's just going back and forth to try and wedge it out. And I had all these noises in my ear, and my jaw was cracking … It was for a while, took a while to get that tooth out, that she just pulled it out, and, and she's ja ja ja, "You go to your classroom," she said to me, and she just sent me back in the classroom. I don't remember if she put gauze, or just kind of put gauze in there, or just threw it in my mouth and just send me back to the classroom. I had to suffer like that with all the pain. I know she did it as punishment because I lied. She wanted to show me … that I could be scared for the rest of my life, and she did succeed in that.[illegible]

Doctors providing care in the residential schools were paid at a significantly lower rate than they were when caring for non-Aboriginal patients.[illegible] This low pay undermined access to qualified care, at times leaving the care of sick children to untrained or incompetent individuals. Rose Marie Prosper recalled how, when she accidentally cut her head at Shubenacadie residential school in Nova Scotia, "all they did was put a cold pack on my forehead. No doctor's visit or nothing … And today, the cut is still visible; the scar is still visible."[illegible]

As an excerpt from a 1938 letter to the Department of Indian Affairs Medical Branch makes clear, in some cases access to medical care depended upon the religious denomination of the school. A "field matron" was stationed at the Protestant mission at Ahousaht, British Columbia, and was expected to provide basic health care to the nearby Catholic residential school. As the letter's author Victor Russier explained,

> The fact of the matter is she has always confined her ministrations to the one school and the one reserve. It should be added furthermore that the present matron has made herself quite undesirable for work amongst the Catholic tribes because of her proselytizing propensities; an objection that very likely should always continue in the event a single matron were appointed to serve the two residential schools and the reservations.[illegible]

Gender roles

Aboriginal girls were trained to perform domestic work. These enforced gender roles undermined the role of women in many Aboriginal communities and broke extended family relationships that had been central to the organization of many Aboriginal communities.

Residential schools also challenged the boys' sense of their own masculinity. Many suffered physical and sexual abuse and other forms of humiliation. The Aboriginal Healing Foundation has noted that men were less willing to participate in its healing initiatives than women, and observed that "it is often difficult for men to admit to having been sexually abused because being a victim is contrary to the widely held stereotype of manliness."[illegible] Charles Cardinal told the Commission how he and his brother became exceptionally close in residential school when they realized that "nobody else is gonna help us, so we'll have to stick together." He recalled how in 1982 his brother killed himself after saying "he wanted to escape." Cardinal stated that he had been told, "'you're not a man, man don't cry.' I'm crying for him right now. But I'll see him, I'll see him. And I'll be the one who's crying now. I sure do miss him."[illegible]

Two-spirited people

Aboriginal people traditionally celebrated people who were gay or transgender as gifted, as being the recipients of "two-spirits." The residential schools had particular impacts upon two-spirited people, who faced numerous attacks on their identities.[illegible]

One two-spirited Survivor explained that few of the two-spirited students that were at the Hobbema, Alberta, school have lived to tell their stories. Some "went to the streets," and "most of them died very early," at least two to suicide. He stated, "I've heard through the years that the residential school made people homosexual ... Nothing could be further from the truth. Residential school made institutional homosexuals; true. But it did not create who we are as two-spirited people. 'Cause that—who we are—was there way before we went in." He also commented on what he saw as the particular vulnerability of two-spirited people in residential schools: "You might as well put a woman into a man's prison. You're left as a target ... For me to survive to, to be sixty-two, it's a miracle for me.... But for the first ten years after leaving that school, it was, there was a lot of things that went on, and I never went home."[illegible]

18) We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.

The health of Aboriginal people today

That the residential school system was an assault on the health of Aboriginal people is not a matter for debate. The catalogues of injury, infection, and death are a matter of public record. The Survivors present powerful evidence of the injuries to health they suffered, and the ongoing effects those injuries and illnesses had on subsequent generations. There is no question that Aboriginal Canadians live today with significant generational effects passed on by their forbearers.

A 2015 discussion paper from the Wellesley Institute titled "First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-Being of Indigenous Peoples in Canada" details the research that links health and the effects of historical and systematic racism. As the publication argues, "The devastating health disparities experienced by Indigenous peoples in Canada underscore the need for comprehensive anti-racism efforts to address systemic and structural racism, as well as the development of services, programming and interventions that recognize the impacts of racism on Indigenous peoples' health and well-being and assist them in dealing with it."[30]

Ken Ward told the Commission that his and his brother's early days at the Blue Quills residential school in Alberta were "like a honeymoon for us, because we look white. Oh, we were the darlings of the res school, and, you know the nuns and the priest, you know, they welcomed us, and they thought we were white, there'll be no problem, you know." The "honeymoon" ended when he was sexually abused in the school. He recalled,

> I was hardcore. I was a hardcore kid at using drugs at thirteen, suicidal big time ... Years later I found out that, you know, both parents went through the res school. My mom went through St. Albert, up by Poundmaker's Lodge there ... I can't remember where my father went. But it was acknowledged that they went through it ... A lot of the anger was more to me, simply because maybe I'm the one who's at fault, or maybe I, I'm bringing it on, like that blame, you know, maybe you deserve it. So, I carried a lot of guilt, a lot of shame, a lot of blame as a child.[31]

After leaving Blue Quills, Ward was placed in a series of foster and group homes. He explained, "I drank bleach, I drank Comet, I wanted, in the receiving home for the weekend, I wanted to burn out, you know, what was inside. I survived, like, I was rushed to the hospital. They pumped me out." He felt like he couldn't "compete with the world, and I just want to surrender, and go, let it go." He continued,

> So, I became a street, street person, homeless guy for, you know, a few years, in Vancouver here, Calgary, Edmonton, Saskatoon, you know, just hung around the street families, and I felt okay within. Simply, I can score my drugs easier and stuff like that.... Get me high, or get me drunk, and I'll sleep with ya, you know.

> It was my way of couch surfing, but it's a place to get high and just go ahead ... I started pumping needles in my arms ... at around the age of 22, and then my drugs of choice were cocaine, mescaline mostly.... But the, the use of needles was quite, was quite heavy then, and I did share it with my older sister. We used to share it, right.... I have a sister, who went through school, and now she's HIV positive, as well as I am, that's how I got infected. That was, for me, at the age of 32. So us older ones went through the mill, the alcohol, the abuse that's happened within themselves, but I didn't really understand where theirs were coming from, eh, until those whole about the res school, it started coming out. I'm 54 now, I knew back then that we had to talk about HIV, because being a former user, I knew that this sickness was gonna hit our people big time, and plus we're heavily addicted in many ways.

Ken Ward has participated in education and sharing circles about HIV prevention: "I work in the prisons as well ... We have a lot of our own people in there, too, whether it's safe to do this in the prison or not, but ... that's a big chunk of our lost brothers and sister out there."[52]

Mortality rates

One of the most significant measures of the health of a society is its infant mortality rate.[53] There are major deficiencies in the statistical information about Aboriginal infant mortality rates, and, in particular, there is virtually no information for Métis or non-status Aboriginal peoples.[54] However, the data that is available confirms that First Nations and Inuit infant mortality rates range from 1.7 to over 4 times the non-Aboriginal rate. These elevated rates are most pronounced for "post-neonatal" children (aged 28 days to 1 year), from causes such as congenital conditions, sudden infant death syndrome, and infections. Aboriginal peoples disproportionately experience all of these infant health issues.[55]

Increased mortality rates continue into adulthood. The mortality rate amongst Inuit children and teenagers is extraordinarily high. From 2004 to 2008, the "age-specific mortality rate" at ages 1 to 19 in Inuit Nunangat (the four regions comprising the traditional Inuit homeland) was 188.0 deaths per 100,000 person-years, compared to only 35.3 deaths per 100,000 in the rest of Canada.[56] While there have been improvements over the last several decades, the life expectancy for First Nations, Métis, and Inuit remains well below that of the total Canadian population.[57]

Even accounting for infant mortality, Aboriginal people in Canada do not live as long as non-Aboriginal people. A 2011 Statistics Canada study found that Canadian women tracked from the 1991 to 2006 census could expect, at 25 years of age, to live 57.9 more years and Canadian men could expect to live another 52.6 years. By comparison, female registered Indians could expect to live 51.1 more years; female non-status Indians 53.3 years; and Métis women 52.5 years. For registered Indian men, the figures were 46.9 years, 48.1 years for non-status Indians, and 48.5 years for Métis men.[58] To be sure, some of the reduced life expectancy overlaps with the lower life expectancy of lower income groups, but the results are disturbing nevertheless.

Injury rates

Serious injury rates for Aboriginal peoples are far above the Canadian average.[59] For First Nations children, there is a correlation between injury rates and whether the child's mother or father attended a residential school.[60] In Inuit Nunangat, injuries are the largest contributor to mortality of children and teenagers, accounting for 64% of deaths (as compared to 36% in the rest of Canada).[61] One study of Calgarians, for example, found that Aboriginal people suffered severe trauma at a rate of 257.2 per 100,000 compared to the non-Aboriginal rate of 68.8 per 100,000, with the leading causes of trauma being traffic accidents, assaults, and suicide.[62]

Ida Ralph attended McIntosh residential school in Ontario. She remembered that she and her sister were going to be adopted but

> that's when my sister had her accident, and she was gone for the next two, two and a half years maybe. I don't know why it took that long for her to get healed up. Today she's not with us today because she got murdered in Calgary in 1983. She was into drugs, really heavy into drugs. She left behind three children to adoption. And I never heard from niece, my two nieces and nephew.[63]

Suicide

The overall suicide rate among First Nation communities is staggering. Forty per cent of deaths amongst young Inuit are suicides, as compared to 8% in the rest of the population.[64] Aboriginal youth between the ages of 10 and 29, who are living on reserves are 5 to 6 times more likely to die by suicide than non-Aboriginal youth. The risk decreases with age, and, after age 70, the rate among First Nations peoples drops below the rate for the general population.[65]

Many of the Survivors and their family members who spoke with the Commission drew a direct link between their residential school experience and suicide. Katherine Copenace attended the Roman Catholic school in Kenora, Ontario. She remarked,

> They used to say we were proud and spiritual people, what happened to that? What happened to that thing that proud and spiritual? ... When I got older, I had thoughts of suicide, inflicting pain on myself, which I did. I used to slash my

> arms, pierce my arms, my body and I destroyed myself with alcohol, which the government introduced of course.[66]

Maurice Marceau attended the Spanish, Ontario residential school where he was physically and sexually abused. His first suicide attempt came after he watched the film *The Boys of St. Vincent* on television, which is about the abuse of children at an orphanage modelled on Mt. Cashel in Newfoundland. He explained,

> That was my first time I tried to kill myself. I overdosed on, on pills and stuff like that, and I was rushed to the hospital, and they pumped my stomach out. Apparently it took five orderlies to subdue me, so they could tie me to a table and pump my stomach out, because I wanted to die, I didn't know why, but I wanted to die, and it took five guys bigger than me to subdue me.... I ingested 40 Tylenols for supper, yeah, and then I woke up the next morning at 7 o'clock, I was puking yellow bile. It looked like egg yolk. And, and I was passing blood out of my back, back end, like my liver, or my organs were, I was bleeding, you know ... I was in a lot of pain, and from that pain, that's, that's, well God was talking to me, you know, you can't do this anymore. So after that, I went to the hospital, and I saw a psychiatrist, and I, I see a psychologist every week to, to, to deal with my emotional being, you know, and, and I'm learning, and thank God I'm learning. And I hope to progress to a point where I, I've been thinking of marriage, and I'm 62 years old, and I'm thinking of marriage again, you know.[67]

Tanya Tungilik is the daughter of Marius Tungilik, who was one of the first Survivors from Chesterfield Inlet to speak publicly about sexual and physical abuse he suffered at the school. She told the Commission about a difficult life at home:

> A lot of my cousins had committed suicide, and I find that it's almost more acceptable nowadays as a way out, to commit suicide. It's almost, yeah, it's too accepted. I had attempted three different times, because I felt hopeless, and that there was no way out. But I would think about my son, and my mom, and my dad, and how it would affect them, and I couldn't, I couldn't do it. But I remember the first time I ever thought about suicide was when I was in grade six. I was so young.... And I know a lot of the social problems today with Inuit, like alcoholism, and physical abuse, sexual abuse, discipline for children. It, it comes from the experiences at the residential school.[68]

Alcohol and drug use are frequently connected to Aboriginal suicides. One study of thirty suicides of adult Aboriginal people in Québec found that all but two individuals had a history of alcohol abuse, and twenty-three also used drugs. Seven of the suicides were incarcerated at the time of their death.[69]

However, general patterns can hide both enormous variations across communities as well as persistent problems. For example, the number of suicides increased dramatically in Nishnawbe Aski Nation communities in Northern Ontario between 1986 and 1995. At the same time, other First Nations have shown steady or even falling rates. In BC, the overall suicide rate has declined among First Nations peoples, but this decline is due to lower rates of suicide among young women; in fact, suicide rates among young First Nations men have remained high.[70] In general, though, amongst Aboriginal peoples, suicide attempts are more frequent among women than men, while the rate of "successful" attempts is higher among men than women. This gender difference, however, is not as pronounced as that seen in the general population.[71]

Addiction

Due in large part to the residential schools, Aboriginal peoples in Canada are more likely to have experienced the types of risk factors associated with addictions. Florence Horassi attended school in Fort Providence, Northwest Territories. She told the Commission about her struggles with alcoholism:

> I was, I was caught in between two worlds, like, I'm, I'm not a white person, I'm Indian, and yet I come back home, no, you're a white person. You live like them, you act like them, you talk like them, go live with them … I learned fear, fear of the unknown … I went to treatment centre a couple of times, one for a follow-up. I must have been through about five, six, seven psychiatrists, psychologists, mental health worker, 'cause everything was a lie to me. When they say alcoholism kills, it's a disease, it's sickness, it's gonna kill you … That's when they were gonna take my kids away, 'cause I was drinking. I drank over 20 years.… My kids were going to be taken away. The police came in, the nurse came in, the Superintendent Social Services came in, they said there was help. I thought they were lying to me. I told them, "Keep them, at least they'll be better off than being with me, 'cause I drink all the time." They said there was help. "We're gonna help you." So, I went to treatment centre. So, later on, I went to training for community addictions training with Nechi Institute. I'm completing my training. Got my certificate.[72]

Although many Survivors have spoken with the Commission about their struggles with addictions, they have also provided the Commission with much information to contextualize addictions as a coping response to the way they were treated at residential school. A number of multigenerational Survivors told the Commission about turning to drugs and alcohol to cope with the scars of residential school. While this might seem to conform to negative stereotypes about Aboriginal peoples and alcohol use, it actually obscures a very complex picture. For example, the First Nations Regional Longitudinal Health Survey found that, compared to the general population, a higher percentage of Aboriginal people don't drink at all.[73]

Addictions and drug use places people at risk of multiple harms, including greater risk of violence. A recent study of young Aboriginal women who used drugs in

Vancouver and Prince George between 2003 and 2010 found that those with a parent who attended a residential school were at twice the risk of sexual assault over the study period.[74]

Fetal Alcohol Spectrum Disorder

A tragic number of those who became dependent on alcohol have been pregnant mothers. The result has been an alarmingly high rate of fetal alcohol spectrum disorder (FASD) in Aboriginal communities, sometimes cited as another legacy of the residential schools. Permanent brain injury caused by FASD, as well as a lack of support, has created challenges for many Indigenous children, too often leading to poor performance in school, disordered lives, and conflict within families and eventually with the law. There are no known research studies that specifically examine the ways in which residential school experiences contributed to the current rates of FASD and alcohol-related birth effects (ARBE) amongst Aboriginal people. Nonetheless, researcher Caroline Tait, in a lengthy review of the literature, concludes that the residential school system contributed to high rates of alcohol abuse among those who previously attended the schools, and among significant numbers of parents and community members who had their children removed from their care because of the school system.[75] The most significant risk factors cited are the many faces of poverty, including poor housing, lack of sewage disposal and potable water, poor access to health services, and lack of adequate nutritious food.[76]

A man who attended residential school in Ontario told the Commission about his son, who was born with FASD. The man had overcome a history of abuse and alcohol use, and spoke of his belief that his son would also find a place for himself with the love and support of his family and community and his cultural traditions:

> I brought him to the Sundance, I brought him to a lot of ceremonies.… But he, he had, he hasn't been sober, and he's been living on the street, and he became a street person, and he is a street person now.… I was a victim, I'm not a victim anymore. I don't have the anger there. I don't have the thoughts about revenge.… My son's suffering now. I know it's part of that legacy. I can't explain it exactly, but I have to have faith in him, too, just like I have faith in myself. He'll succeed somehow, somehow. He's got the same spirit, same kind of spirit as you and I have, I know that. Even with the brain damage, he's gonna be all right. He's got a lot of love in, in him.[77]

Tait notes that women at risk for having a child with FASD have generally poor health and are likely to suffer from one or more alcohol-related illnesses. They are also more likely to die within a very short period of time of giving birth if they do not receive treatment for their health problems. She writes, "While a great deal of concern, which at times is expressed as outrage, has occurred in Canada over the birth of children with FAS/ARBE, (Fetal Alcohol Spectrum/Alcohol-Related Birth Effects) there has been far less concern (and even less outrage) over young women, many of whom are Aboriginal, dying of alcohol-related illnesses or accidents. As with FAS/ARBE, these illnesses/accidents are one-hundred per cent preventable."[illegible]

HIV/AIDS

In 1992, Chief Edward John observed that the harmful legacy of residential schools was "like a disease ripping through our communities."[illegible] The disease metaphor was, unfortunately, prophetic. Aboriginal people are disproportionately represented among Canadians living with HIV/AIDS.[illegible] One study of 1,064 Aboriginal people living with HIV/AIDS, conducted between 2010 and 2012, found that 30% were residential school Survivors.[illegible] In another study, most of the Survivors and descendants reported that their physical and mental health had been affected by residential schools, as reflected in their problems with addictions, low self-esteem, and poor parenting skills. One respondent explained, "I can live with the disease, but the 'mental' damage from residential school is a very serious disease."[illegible] Other studies of HIV/AIDS have had similar results.[illegible] Aboriginal drug users in Vancouver have elevated HIV incidence when compared to non-Aboriginal drug users.[illegible]

Mental health

Leona Bird attended the Prince Albert, Saskatchewan, school. She received a settlement for being sexually abused in residential schools but she says it did little to alleviate the long lasting effects on her and her family. She explained,

> I'm still the same. There's just barely, hardly any time that I can say that I was truly, truly happy. My wedding day was just like another day, no fun.... I can't take back what I've done in my lifetime. I was forever being charged with assault, sent to jail 10 months at a time.... Yeah, I'm suffering from depression.[illegible]

Physical and sexual abuse at residential schools had profound intergenerational effects. Case studies conducted by the Aboriginal Healing Foundation suggest that more than 50% of community members needed healing from the effects of residential schools.[illegible] Many former students told the Commission that they were denied the opportunity to learn nurturing parenting skills and they replicated the strict and uncaring discipline that they experienced at school. The lack of positive strategies for dealing with interpersonal conflict may have led to high rates of family breakdown and problems that youth carry with them into their adult lives.[illegible]

Annie Thomas describes herself as "third generation residential school Survivor":

> We did not belong to our families, we belonged to the government.… I lived a life of rejection. I lived a life of betrayal. I lived a sense of not belonging to my parents, to my family, to my community.… Sex, drinking, rebellion, hatred, anger, resentment, bitterness, hostility, chip on my shoulder over my pre-teen years, I had to show people they can't push me around now. 'Cause if you do, I'm going to flip out on you.

She has since been diagnosed with a bipolar condition, which she links directly to her years at residential school. "I started having my own little getaway in my mind."

Displacement

Angus Havioyak was sent from his home in Inuvik to Alberta for medical treatment: "I was in the hospital, 1962, I believe, 'cause I had TB, that was in Edmonton—Camsell Hospital—they used to call it. I was there for two years. At that time, I, I didn't know about my parents. I didn't know I had brothers and sisters. In our family, I had eleven; there's 10 of us."

The hospital that Havioyak and many other Northerners were and still are sent to is more than a thousand kilometres from home, well beyond the possibility of any regular family visits, both in distance and in cost.

Mabel Brown told the Commission at Inuvik how she saw disturbing parallels between her treatment in Northern residential schools and today's lack of adequate treatment facilities close to home:

> They did away with all the treatment centres. They used to have one here called Delta House, and it's no longer; it's called the homeless shelter now. And they did away with two treatment centres in Yellowknife. Really beautiful places that people used to go and … and there's just that one in Hay River; it's just always waiting, people waiting to get in there too; so people have to go south.

She recalled, when her grandson needed treatment:

> We didn't want to send him down south, down to another province. We want him to stay in our home province and ... and yeah. And then, they let me escort him down to Regina then I come back, he ran away. He ran to Regina. And so I, I told his dad and his dad just burst out crying. And we're, we're fighting for it now, just like, just like what they took us away to residential schools; away from our own homes. Same thing.

Most Inuit communities access primary health care services through nursing stations, so most Inuit patients must travel to regional centres or southern cities to consult medical specialists, have operations, and deliver babies. In general, services are delivered within a Western model of medicine. In an echo of Inuit experience with residential education, many Inuit report that medical transfers to the south can be isolating and demoralizing experiences, because they are separated from their families and home communities during a time when they are most in need of support.

There are also significant service gaps, particularly in remote locations. These communities have limited availability of physical health services and virtually no specialized mental health services. Care is provided mainly by primary care clinicians (nurse practitioners) or community workers, supplemented by a rotation of occasional visiting physicians.

Off-reserve Aboriginal peoples are caught in a different and difficult position. They are frequently in urban centres, far from family and home, where their access to Western medicine and doctors is limited to the emergency room of a hospital. They also face challenges in finding ways to access Aboriginal health practices. The Aboriginal Healing Foundation found that three out of ten urban Aboriginal people said it was somewhat or very difficult to access traditional healing practices. Inuit, Métis, and First Nations people living off reserve were significantly less likely to have seen or talked to a family doctor, but were significantly more likely to have seen or talked to a nurse, than non-Aboriginal people. The difference was particularly marked for Inuit, where 53% of Inuit saw or talked to a doctor and 49% saw or talked to a nurse, compared to 77% and 11% of non-Aboriginal respondents, respectively. The Aboriginal Healing Foundation noted that few services grounded in Aboriginal traditions are available. That greatest challenge is the fact that clients come from city to reserve, which means that their families also are far away. We believe it is meaningful to re-establishing ties with family, but geographical distance can make this more difficult.

Food insecurity

In January 2015 Statistics Canada reported that "Food insecurity was more common among the three Aboriginal groups, with the highest rate among Inuit at 27%, four times the proportion of 7% for non-Aboriginal people." Another recent study found that, in 2012, off-reserve Aboriginal households in Canada were about twice as likely as other Canadian households to be food insecure.

A 2013 study of Aboriginal households found that those with food insecurity "were more likely to report poor general health (26% versus 11%) and poor mental health (21% versus 10%), life dissatisfaction (10% versus 3%), a very weak sense of community belonging (14% versus 11%), high stress (30% versus 21%), and cigarette smoking (59% versus 40%)." Also, First Nations people aged 45 and over had nearly twice the rate of diabetes compared with the non-Aboriginal population (19% versus 10%). The Commission views these reports simply as a reminder of the need for conscientious

[illegible]

Link is clear

[illegible]

[illegible]

> [illegible]

Recent failures of government action

[illegible]

The Aboriginal Healing Foundation and the Indian Residential Schools Resolution Health Support Program

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

> [illegible]

[illegible]

[illegible]

[illegible]

Aboriginal Affairs and Northern Development, stated that "The Aboriginal Healing Foundation provided things ... that we aren't going to be in a position to fund." Jacob Gearheard, executive director of the Ilisaqsivik Society in Clyde River, Nunavut, stated that community members on Baffin Island who had been offered a range of culturally sensitive healing programs must now call a 1-800 number in Whitehorse, Yukon, three time zones away. They are not given the name of a person to call, and there is no guarantee that they can be served in the Inuktitut language. He added, "For Clyde River members a help line in Whitehorse is almost the same as nothing."[115]

The IRSRHSP cannot carry on the work of the AHF without a complete transformation of its mandate and structure. Indeed, the Standing Committee on Aboriginal Affairs review in 2010 stated categorically that the IRSRHSP, while "technically proficient," is no substitute for the "real, innovative, transformational work that communities have been developing through their community projects."[116]

Jackie Fletcher's father, siblings, aunts, and uncles all attended residential school and she also did for a short time. She noted,

> Since the Aboriginal Healing Foundation got their dollars, and there was a lot of workshops being offered in different places, I, I would attend every workshop. I was just soaking them up, like, you know I just wanted to be there. I still, I'm still like that. When I hear anything like this happening, I want to be there.... Because every time I go somewhere, I learn something new every time ... And it's, it's, I've been working on this, on my own personal healing now.[117]

It must be said that throughout the work of the Truth and Reconciliation Commission, Health Canada has offered important integrated support to Survivors of residential schools and their families, often by drawing on cultural and spiritual resources and wisdom from within Aboriginal communities. High quality, integrated mental health and cultural support teams were available to support those who took part in our activities. The Commission acknowledges and honours those who have provided this health support. One of the Commission's interim recommendations was designed to ensure that such workers, particularly those specially trained and with proven performance as resolution health support workers and cultural support workers, received recognition and accreditation for their valuable work and demanding experiences.[118]

At the same time however, Health Canada's individualistic approach and its focus on providing support for Survivors who are in acute distress, rather than a strategy and commitment for longer-term continuous support for the wider community, fails to address the legacy of the residential schools. It discounts the potential for holistic community interventions that can benefit many Aboriginal people on a day-to-day basis regardless of their direct connection with residential schools.

Helen Doyle is the daughter of a residential school Survivor and works with many Survivors. She has warned that dealing with the trauma of the experience "takes a lifetime to do it. It's not something that can be done in eight weeks, 10 sessions, 12 sessions, and you know, which is how … Health Canada puts it … That's annoying too for survivors."[119]

National Aboriginal Health Organization

In addition to allowing the important work of the Aboriginal Healing Foundation to lapse, the Government of Canada has cut the $5 million in annual funding that the National Aboriginal Health Organization (NAHO) received. As of June 30, 2012, this important organization, like the Aboriginal Healing Foundation, closed its doors.

This cut in the 2012 budget for the purpose of saving $5 million each year strikes the Commission as especially mean-spirited and unnecessary, particularly given the ongoing work at that time of the Commission and other processes established by the Settlement Agreement.

For over twelve years, NAHO has employed thirty specialists in Aboriginal health and issued over two hundred publications about Aboriginal health, including thirteen issues of the *Journal of Aboriginal Health*.[120] The available evidence suggests that there is not enough research on Aboriginal health.[121] The Commission is deeply disappointed with these cuts. It believes that they constitute serious barriers to reconciliation.

Cuts to other Aboriginal organizations

In late March 2012, Canada abruptly terminated funding for several other key Aboriginal organizations: the First Nations Statistical Institute, Pauktuutit Inuit Women of Canada, and the National Centre for First Nations Governance. The cutting of the annual $5-million budget of the First Nations Statistical Institute is especially short-sighted given the importance of accurate data to measure progress in redressing the legacy of residential schools. The National Centre for First Nations Governance provided important capacity building for Aboriginal self-determination. The Pauktuutit Inuit Women of Canada has been working since 1984 in a broad range of health and violence matters relating to Inuit women, including human trafficking, fetal alcohol effects, and violence against women.[122] It has wide regional representation in the North and is a respected voice for Inuit women.

The Common Experience Payment

Common Experience Payments (CEP) were the modest compensation payments given to former residential school students according to a prescribed formula based on years of attendance at schools approved by the Settlement Agreement. The whole process of claiming and receiving redress for the residential school experience has added its own new element of harm.

The daughter of one residential school Survivor described the harsh impact that the settlement process had upon her aunt:

> We went to visit her because we were out visiting my aunts and uncles here in Regina. It came up in discussion when they were first starting to negotiate the [residential school] settlement and they were wanting to put money in the healing fund. We were having this conversation and I don't know how it started but she said, "I don't want healing, I don't want any of that. They can take their money. They can't heal me. They can never give me back what they did to me." She was angry. She said, "I can't hug my kids, I couldn't be the mother to my children and I blame all of that on residential school. No amount of healing is going to fix me." It was really emotional and that was just the highlights of it. It was more of a half hour cathartic experience with my aunt and my cousin sitting there, listening to her and it was really hard knowing that there's a lot of survivors out there and they're not going to heal.[123]

The Aboriginal Healing Foundation conducted an evaluation of the effects of claiming or receiving the CEP on 281 First Nations, Inuit, and Métis residential school Survivors across Canada. Forty per cent of the respondents found the CEP process difficult or challenging; a third found that the process triggered negative emotions and flashbacks; and 20% said that the long wait caused anxiety. Although a quarter of the respondents felt that the process contributed to healing, half stated that receiving compensation made no difference to their well-being, and 20% experienced the process as a step backwards often because it left them bitter and angry. One participant commented that the application "brought up the memories ... I had a panic attack. I ended up in the hospital ... Just to realize that, yes it was true, it did really happen."[124]

Unsafe living conditions

While issues such as poor quality housing and water are not direct legacies of residential schools, substandard community infrastructure increases the health burden, and consequently increases the challenges of addressing the legacy of the residential schools. Communities, families, and individuals that are in crisis cannot heal. For this reason, we make specific note of the shameful state of community infrastructure in many Aboriginal communities.

Water

As part of Canada's 2014 Economic Action Plan, the federal government announced an investment of $323.4 million to be spent over two years to build and renovate water and wastewater infrastructure on reserves.[125] This money is on top of the approximately $2.5 billion it has spent since 2006 on First Nations water and wastewater infrastructure through Aboriginal Affairs and Northern Development Canada's Capital Facilities and Maintenance Program, the First Nations Water and Wastewater Action Plan, and Canada's Economic Action Plan.[126]

Sadly, even these additional funds come nowhere near what is required to ensure all First Nations have access to safe drinking water, as the government's own consultant stated in 2011. This serves as a measure not only of the urgent work that needs to be done today, but also of the extent to which services and facilities in the past have been substandard, or allowed to deteriorate without adequate maintenance. An April 2011 report on a survey of water systems in First Nations communities found that 39% are categorized as "high overall risk" with a further 34% categorized as "medium overall risk." In terms of wastewater systems, 14% are categorized as "high overall risk" with a further 51% categorized as "medium overall risk." This did not include the twelve First Nation communities (2%) with no active infrastructure. The report commissioned by the Government of Canada estimates that the cost of upgrades to meet standards is over a billion dollars (not including new service connection costs).[127] Thus, the money currently allocated is known to be utterly inadequate. As of August 31, 2013, there were 178 water systems in 122 First Nation communities under a drinking water advisory.[128]

In 2013, the Government of Canada passed the *Safe Drinking Water for First Nations Act*, a highly controversial piece of legislation that allows the government to enact regulations governing drinking water and waste treatment in First Nations communities.[129] Before it passed, the Senate Committee on Aboriginal Peoples raised serious concerns about its implications for Aboriginal and Treaty rights.[130] The Senate committee urged the Government of Canada to ensure that the development of water safety regulations be based on meaningful consultation with First Nations.[131]

A 2013 evaluation found that the First Nations Water and Wastewater Action Plan "may not address the more pervasive issues and a shift to longer-term planning is needed."[132] A serious investment in training and operational support is what is required to provide a safe drinking water supply, more so than complex equipment. It recommended, among other things, that First Nations and Health Canada develop a long-term strategy for investments in water and wastewater infrastructure and maintenance in order to address the pervasive and longstanding issues of water and infrastructure quality and maintenance and that regulations ensuing from the *Safe Drinking Water for First Nations Act* are developed with the engagement of First Nations.

Housing

A 2007 study by the House of Commons Standing Committee on Aboriginal Affairs and Northern Development found that estimates of on-reserve housing shortages ranged between 20,000 and 87,000, with the estimated shortfall growing annually by over 2,000 units. Inuit communities, particularly in Nunavut and Nunavik, are also affected by growing shortages. Mould contamination in existing units remains a significant problem. One in five Aboriginal dwellings across Canada is in need of major repairs, compared to one in ten for Canada as a whole.[133]

The government claims that, under Canada's Economic Action Plan, "nearly 500 First Nations communities across Canada benefitted from the Government's $400 million investment to support the construction of new on-reserve housing, renovate existing social housing units and for other complementary housing activities."[134] However, part of the Government of Canada's strategy has been to fund "market-based" housing on reserves, through its First Nations Market Housing Fund, which relies on the free market to build affordable housing.[135] This could be seen as a threat to principles of communal ownership of land.

Despite these efforts, in 2014 the United Nations special rapporteur on the rights of Indigenous peoples described the housing situations in Inuit and First Nations communities as having reached a "crisis level."[136] These weaknesses in community infrastructure remain a significant obstacle to community health and wellness. The health legacy of residential schools cannot be overcome while such conditions remain too often the norm.

Disparities in health outcomes

The Commission is concerned that too many Canadians still fail to fully understand the harmful legacy of residential schools and similar assimilation policies on Aboriginal health and wellness. In the absence of such understanding, there is a tendency to blame Aboriginal people for their poor health and lack of services. Even Statistics Canada's most recent reports on Aboriginal health focus on smoking, obesity, and drinking with little attempt to contextualize these factors.[137] There is a need for greater understanding of how the direct and intergenerational effects of residential schools have often produced trauma and self-hatred that lead too many Aboriginal people to engage in destructive behavior from suicide to smoking. Addictions in particular have contributed to the shockingly high rates of both incarceration and crime victimization.

There is a clear need to embrace a holistic approach to Aboriginal health—an approach that recognizes that health is inextricably connected with families, community, culture, language, justice, and poverty.

The persistent health gaps between Aboriginal and non-Aboriginal people in Canada can be measured by the continued and disproportionate impact of poverty and poverty-related diseases, including tuberculosis, a disease that was believed to be eradicated and that has killed so many Aboriginal people in the past, including many children.[138] In 2010, the *Globe and Mail* reported that the tuberculosis rate among status Indians was thirty-one times the rate of those of non-Aboriginal Canadians. It drew parallels with Dr. Bryce's unheeded warnings a hundred years earlier about tuberculosis epidemics in the residential schools.[139] These health outcomes would not be tolerated if they afflicted non-Aboriginal Canadians, but, more importantly, these health disparities between Aboriginal and non-Aboriginal Canadians need to be researched and explained and contextualized. Otherwise, the work of reconciliation becomes significantly more difficult.

Statistical shortfalls

Recent restrictions on the national census and the methods of reporting used by Health Canada and Statistics Canada are making it more difficult to monitor health for Aboriginal people. Even before such restrictions, researchers were unable to properly estimate basic health indicators, such as life expectancy at birth for Canada's Inuit population, because of a lack of Aboriginal identifiers on death registrations and could only make educated guesses based on findings from areas with large Inuit populations.[140]

Much of the best information about the comparative health outcomes between Aboriginal and non-Aboriginal Canadians is incomplete and becoming outdated. It is difficult to determine whether the health gap has widened or narrowed. The lack of up-to-date information means that these issues attract less public, media, and political attention.

By contrast, the Australian government has set itself a series of health-related targets as a part of the apology issued by Australian Prime Minister Kevin Rudd in 2008. There is agreement on baseline health indicators so progress can easily be measured on health, education, and employment outcomes.[141] Australian targets include

- close the gap in life expectancy by 2031;
- halve the gap in mortality rates for Indigenous children under five by 2018. There has been a 35% decrease in the gap in child death rates since 1998, although much more will need to be done if the goal is to be met by 2018;
- halve the gap in reading, writing, and numeracy achievements for children by 2018;
- halve the gap for Indigenous students in Year 12 (or equivalent) attainment rates by 2020; and
- halve the gap in employment outcomes between Indigenous and other Australians by 2018.[142]

Setting such targets ensures that government must monitor indicators of health and is accountable for failing to meet targets. Of course, the Australian example also demonstrates that setting targets is not sufficient without committing the necessary resources to achieve them. The 2015 annual report shows that Australia has made little progress on many of its goals.

No comparable and measurable commitments were made when Prime Minister Stephen Harper delivered his 2008 apology for residential schools. In fact, the Canadian government has cut health grants to the Native Women's Association of Canada, the Métis National Council, the Congress of Aboriginal Peoples, the National Indian and Inuit Community Health Representatives Organization, and Inuit Tapiriit Kanatami.[143] These organizations have been committed to models of research in which Aboriginal communities have ownership, control, access, and possession. Their loss would significantly limit the development of accurate information about health issues and solutions for Aboriginal peoples. The cancellation of Canada's long-form census and the Aboriginal Children's Survey has further contributed to undermining access to accurate research and information.[144]

These drastic and sudden cuts have led some to conclude that the Government of Canada is "deliberately undermining capacity to generate accurate Aboriginal health data and circulating discredited health data so as to downplay the severity of the Aboriginal health crisis in Canada."[145] Dr. Janet Smylie, a professor of family medicine and research scientist, argues that the infant mortality rate on Aboriginal reserves as published by the Public Health Agency of Canada underestimates the rate by as much as 60%.[146] Organizations that could have supplied correct information have been gutted.

19) We call upon the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes between Aboriginal and non-Aboriginal communities, and to publish annual

progress reports and assess long-term trends. Such efforts would focus on indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

Weaknesses in existing agreements

It may seem promising that for many years federal policy towards Aboriginal health has emphasized the language of community control. The Government of Canada permits community control over health services in three main ways: the Health Transfer Policy, the Integrated Model, and self-government agreements. However, each of these models has significant limitations.

The Health Transfer Policy, initiated in 1989, provides opportunities to individual communities and tribal councils to have increased local responsibility in the planning and delivery of community-based health services, as well as some regionally based programs.[147] However, the programs over which communities may exercise local control are those established and governed by the First Nations and Inuit Health Branch of Health Canada. In addition, most on-reserve health facilities receive funding for only a limited number of health promotion and prevention services.[148] Also, not all Aboriginal peoples are eligible. Only First Nations communities south of the sixtieth parallel and Inuit in Labrador are eligible for funding under this policy.[149]

The "integrated model," created in 1994, was designed to broaden opportunities for control to communities that were deemed "too small" to successfully manage transfers. Like the transfer policy, communities participating in the integrated model choose from a list of programs and sign a three- to five-year agreement for community administration.

Communities can also negotiate a self-government agreement. For example, the James Bay and Northern Quebec Agreement created health care structures managed by Aboriginal authorities but linked to the provincial health care system. The Nisga'a Agreement in British Columbia and the Labrador Inuit Association Agreement are tripartite agreements that include provisions for self-administration of health services. In the Yukon, the Carcross/Tagish First Nations Programs and Services Agreement Respecting the Indian and Inuit Affairs Program and the First Nations and Inuit Health Branch of the Government of Canada (2003) transfers responsibility for health and other services to the First Nation.[150] Although not a self-government agreement, the Athabasca Health Authority in Saskatchewan is another example of an Aboriginal health authority that is an extension of a provincial health care system, providing care to two First Nations and three Métis communities.[151]

The First Nations and Inuit Health Branch funds over thirty separate Aboriginal health programs, one quarter of which cannot be included in integrated, transfer or self-government agreements. An additional problem is that these programs receive "project-based funding," so community health activities survive or fall based on the availability of funds, rather than by a true reflection of community priorities.

The danger when the federal government uses the language of 'self-government' and 'community control' is that it can mask offloading of services to communities without adequate resources. Indeed, as the above descriptions suggest, Canada's vision of community control has typically entailed the transfer of administrative responsibility for existing health-related programs, thus absolving the government of responsibility for Aboriginal health. At best, Canada's policy of 'community control' has resulted in a patchwork of Aboriginal-specific legislation, policies, and provisions, with significant gaps.[illegible]

The latest model to emerge is the "tripartite health agreement." British Columbia is the only province to establish a framework through which agencies mandated by First Nation governments, organizations, and communities deliver health services operating under provincial jurisdiction. The Tripartite Framework Agreement on First Nation Health Governance, completed in October 2011, sets out a commitment to establish a First Nations Health Authority. Federal funding for existing federal health programs, and responsibility for First Nations health program design and delivery, will be transferred to the new Authority.[illegible] Ultimately, the Authority is expected to replace the Non-Insured Health Benefit Program (which covers the cost of prescription drugs, dental and vision coverage, medical equipment, and some other services) with its own program serving "Status Indians" in British Columbia, as well as potentially taking over other provincial programs.[illegible]

The agreement commits to a health system in which all First Nations in the province have access to quality health services comparable to those available to "other Canadians living in similar geographic locations."[illegible] This may seem to be a laudable goal, but it ignores the higher health needs of Aboriginal people, which are in part related to the legacy of the residential schools. There is a danger that the goal of "comparable" services may be an example of formal equality that, by failing to accommodate the higher health needs of Aboriginal people, may fail to achieve substantive equality or equal health outcomes.

The tripartite model could have the advantage of preventing jurisdictional issues from acting as a barrier to the development of Aboriginal-controlled health care. However, it is too early to tell whether the BC agreement will result in a genuine transformation of health care services under Aboriginal control.

Métis health promotion, prevention, and protection services and programs are in the very early beginning stages. Neither the federal nor the provincial governments have assumed responsibility for providing health services to Métis people, or developed a policy or strategy for addressing Métis health needs. National and provincial/territorial Métis organizations lack sustained funding for health programs, and there is little progress in the devolution of Métis health funding to Métis organizations.[illegible]

The only exception for Métis peoples is in the Northwest Territories, where the territory provides Métis with access to a program that is equivalent to the federal government's Non-Insured Health Benefits program.[illegible] However, even for Métis people in the Northwest Territories, significant gaps remain.

The federal government has been fighting for many years to stop litigation aimed at obtaining a legal ruling on federal jurisdictional obligations. In April 2014, the Federal Court of Appeal ruled in *Daniels v. Canada* that Métis are included as 'Indians' within the meaning of the *Constitution Act, 1867*, which would mean that the federal government does indeed bear responsibility for Métis peoples.[illegible] The Federal Court of Appeal dismissed a lower court's finding that "non-status Indians" also fall within federal jurisdiction.[illegible] Both sides have appealed to the Supreme Court. It is anticipated that the Supreme Court will hear the case in the fall of 2015. In the meantime, Aboriginal peoples living off reserve continue to live in a no-man's land when it comes to health services.

20) In order to address the jurisdictional disputes concerning Aboriginal people who do not reside on reserves, we call upon the federal government to recognize, respect, and address the distinct health needs of the Métis, Inuit, and off-reserve Aboriginal peoples.

The way forward

Our Calls to Action for future improvements to Aboriginal health involve a two-track strategy. The first track will be to give Aboriginal communities the resources and freedom that they require to take responsibility for their own health and wellness through the development of health and wellness centres. At the same time, the Commission will also recommend that improvements be made to the existing Western-based health-care system so that it can treat Aboriginal people better. This is particularly important with respect to urban Aboriginal populations.

One of the main purposes of all of the Commission's recommendations is to ensure that the harms that residential schools perpetrated on Aboriginal people are not being perpetrated again in a new form.

Aboriginal healing practices

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Aboriginal healing centres

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he was "homeless" and just "seeking shelter." Judge Timothy Preston concluded that Mr. Sinclair "did not have to die."[illegible] His recommendations included the use of Elders in hospitals, Aboriginal discharge planners, and ongoing cultural safety training for health care workers.[illegible]

The Health Council of Canada has noted that providers must be made familiar with the long history of discrimination and colonialism, and that Aboriginal people impacted by the residential school system "may have a heightened sensitivity to practices that are a routine part of hospital life."[illegible] For example, the institutional environment typical of hospitals can trigger traumatic childhood memories. Indeed, just the fact of having to leave home communities to obtain services reproduces harmful patterns associated with residential schools.

The Society of Obstetricians and Gynaecologists of Canada has a guide for health professionals working with Aboriginal people that sets out basic expectations about the knowledge that health professionals should have, including a basic understanding of the appropriate names for various groups, current socio-demographics, traditional geographic territories and language groups, and an understanding of the impact of colonization on the health and well-being of Aboriginal people.[illegible] Health professionals should recognize the need to provide health services for Aboriginal people as close to home as possible, and the need to support Aboriginal individuals and communities in the process of self-determination.[illegible] These guidelines were based on input from a number of Aboriginal contributors and supporting organizations, and they represent a good model for other health professionals.

International historical and legal precedents for Aboriginal health care rights

The *United Nations Declaration on the Rights of Indigenous Peoples* recognizes that Indigenous peoples have the right to physical and mental integrity, as well as the right to equal enjoyment of the highest attainable standard of physical and mental health. In taking measures to achieve these goals, states are obligated to pay particular attention to the rights and special needs of Elders, women, youth, children, and persons with disabilities.[illegible] Indigenous peoples have the right to be actively involved in developing, determining, and administering health programs that affect them.[illegible] Indigenous peoples also have the right to their traditional medicines and to maintain their traditional health practices.[illegible]

The UN Declaration is but one of several international human rights documents that collectively establish a right to health, including a right to health care and a right to a culturally appropriate health care system. There are no human rights without health—and no health without human rights. In other words, the right to health is international law is a holistic concept that incorporates much more than simple access to health care. It is intimately tied to other key social, economic, and political rights: the right to food, the right to adequate housing, the right to education, the right to work and rights at work, the right to life, the right to information, the right to physical integrity, the right to be free from discrimination, and the right to self-determination.[101]

Thus, the approach to health in international law is entirely consistent with Aboriginal approaches to health.[102] It is a positive right, which requires government to take action to make the right meaningful.

The historic Treaties established additional international law obligations concerning Aboriginal health and wellness.[103] The right to medical care was enshrined in Treaties 6, 7, 8, 10, and 11.[104] Treaty 6 explicitly included provision of a "medicine chest" and relief from "pestilence."[105] However, the right to health is not limited to these Treaties. The Treaty negotiations included many references "to the protection of, and non-interference with, traditional ways of life," which encompasses Aboriginal health.[106] Health and wellness, including in some cases self-government provisions for control over health care services, have also been a component of many of the contemporary Treaties and self-government agreements signed by Inuit, Métis, and First Nation governments in many regions of the country.[107]

Finally, the honour of the Crown, with its fiduciary obligations to Inuit, Métis, and First Nations peoples, requires that the Crown ensure Aboriginal peoples enjoy the same standards of health and wellness as others.

Self-determination and health care

Self-determination is a foundational right, without which Aboriginal peoples' rights cannot be fully realized. There is a growing body of literature tying social and health problems to a lack of "community control." As such, community control and autonomy are important protective factors in preventing ill health.[108] The Commission believes that community well-being and healing from the trauma of residential schools will only be achieved through Aboriginal self-government and self-determination.

The Inuit Tapiriit Kanatami has argued,

> Self-determination improves health outcomes since communities who control their resources and services can initiate programs that match their needs, reducing delivery gaps and creating valuable support networks for vulnerable groups. Control over fiscal resources enables communities to plan enduring, well-integrated economic, social, and health programs that spawn lasting changes. Furthermore, self-determination generates new employment opportunities associated with running institutions and programs.[109]

Research also suggests that there is a need for healing centres in cities. One study of Aboriginal women on Vancouver's Downtown Eastside found that, despite the services provided by the Vancouver Native Health Society and other organizations, many Aboriginal women wanted more holistic options. One Aboriginal woman explained, "I prefer to be around First Nations people because they're the ones who understand where we come from. When you go in there [the Clinic], a non-Native person will look at you as a client. But a First Nation's person will look at you like a friend, but will maintain her professionalism."[190]

A place for Aboriginal people and principles

The stories that Survivors have told the Commission have convinced us that traditional healing practices and involvement in Aboriginal culture and communities are vital parts of healing the wounds that residential schools have inflicted on former students and their families and students.

The Royal Commission on Aboriginal Peoples emphasized that simply increasing resources within the current health care system would not be sufficient.[191] A fundamental reorganization was recommended based on the following four principles:

(1) Equitable access to health services and equitable outcomes in health status

(2) Holistic approaches to treatment and preventive services

(3) Aboriginal control of services

(4) Diversity of approaches that respond to cultural priorities and community needs.[192]

These remain relevant and achievable goals. Had these steps been taken at the time of the RCAP report in 1996, Aboriginal and non-Aboriginal communities would be in a much better position to truly tackle the ongoing health legacy of the residential schools. For example, RCAP found that in 1993 that only about 0.1% of physicians in Canada were Aboriginal. RCAP found similar underrepresentation in other health and social services professions such as nursing, dietetics, and dental therapy.[193] Thus, the need to develop Aboriginal health professionals is a pressing priority. This priority is, of course, closely connected to the need to transform and invest in an educational system that breaks with the residential school past. Consideration should be given to schools that will train Aboriginal doctors and nurses and facilitate research and practice that combines Western and Aboriginal approaches to health care.

In its 1996 report, RCAP challenged federal, provincial, and territorial governments to train ten thousand Aboriginal professionals over a ten-year period in health and social services, including medicine, nursing, mental health, psychology, social work, dentistry, nutrition, addictions, gerontology, public health, community development, planning, health administration, and other priority areas identified by Aboriginal people.[194]

Research based on the censuses conducted in 1996, 2001, and 2006 found that 12,965 First Nations, Inuit, and Métis people entered health careers between 1996 and 2006. The study reported that the "10,000 target" set by the Royal Commission can be interpreted as having been surpassed. However, despite these achievements, equitable representation was still not achieved, with Aboriginal people making up 3.8% of Canada's population according to the 2006 census and only representing 2.2% (or 21,815 people) of Canadian workers in health occupations. The study observed that Métis health professionals and paraprofessionals working in off-reserve areas increased from 2,895 in 1996 to 10,425 in 2006, with two-thirds of the increase coming in the 2001–06 period. First Nations representation increased from 3,745 to 7,530 between 1996 and 2006. For Inuit peoples, the increase was from approximately 325 to 430 over the same period, and for on-reserve populations, the numbers of First Nations health care providers grew from 1,435 to 2,550 over the ten-year period from 1996 to 2006.[195] Despite such progress, serious shortfalls remain.[196]

In September 2004, in part in response to several RCAP recommendations, the Government of Canada created a five-year program called the Aboriginal Health Human Resources Initiative, which has three main goals: (1) to increase the number of Aboriginal people working in health careers; (2) to adapt health care educational curricula to support the development of cultural competencies; and (3) to improve the retention of health care workers in Aboriginal communities. This program was not extended at the conclusion of its five years of funding. Rather, the development of health human resources for Aboriginal communities became part of a Pan-Canadian Health Human Resources Strategy, which subsequently became the First Nations and Inuit Health Human Resources program in 2011.[197]

A 2013 evaluation report (covering 2008–09 and 2012–13) found that there has been "progress on increasing enrolments in and graduations from health programs" through "access, bridging and support programs," bursaries, and scholarships. However, there is no "baseline information available pertaining to the number of First Nations individuals originating from reserves or Inuit communities who are enrolling in and/or graduating from post-secondary institutions from various health disciplines or on the extent to which they return to their home communities after graduation," so it is not possible to know whether representation has improved.[198]

The anticipated success of such programs is expected to be limited in light of "many barriers to enrolment in post-secondary education [that] do not fall under the purview of Health Canada, specifically gaps in education at the primary and secondary school level," which again highlights the need for a holistic approach.[199]

Involvement of the churches

A small additional source of money and programs to promote healing has come through the churches involved in running the residential schools. Those churches involved in the Indian Residential School Settlement Agreement made commitments to fund healing initiatives, although a number had already established reconciliation and healing initiatives prior to the agreement. The Presbyterian Fund for Healing and Reconciliation, the United Church of Canada Healing Fund, and the Anglican Healing Fund were mandated under the Settlement Agreement to receive applications for initiatives or programs designed to assist with healing and reconciliation for former students and their families and communities, and to make grants or approve in-kind services.[200]

The churches fund many small but important community projects. For example, in the fall of 2013, the United Church's Healing Fund decided to fund eleven proposals at a total cost of $150,000. One project was to encourage Nuxalk language instruction; another was to allow Elders to participate in the Ekiwaamijigaadeg Inwewin Language Nest of the Chippewas of Nawash in Ontario. Another project involved anger management, grief, and loss workshops.[201]

The church-funded programs are small and project-based. They are no substitute for the Aboriginal Health Foundation. In addition, in the case of the Catholic Church, funding of healing initiatives was tied directly to the Foundation. Pursuant to the Settlement Agreement, the Catholic Church fund took applications and recommended programs to the Aboriginal Healing Foundation. If the Aboriginal Healing Foundation approved the application, the Committee would forward the funds to support the program, which was then administered by the Foundation.[202]

The search for equal outcomes

The *Canada Health Act* requires all insured persons in Canada to have reasonable access to health services.[203] However, most Aboriginal health practices are not treated as "insured services" (and therefore are not covered by provincial or federal health programs).

Yukon is the only jurisdiction where health legislation recognizes the need to respect traditional healing practices and the importance of establishing partnerships with Aboriginal peoples. The *Yukon Health Act* provides that the minister of health "shall promote mutual understanding, knowledge, and respect between the providers of health and social services offered in the health and social service system and the providers of traditional aboriginal nutrition and healing."[204] The same section of the Act also provides that its purpose "is to secure aboriginal control over traditional aboriginal nutritional and healing practices and to protect these healing practices as a viable alternative for seekers of health and healing services."[205]

Ontario's Aboriginal Healing and Wellness Strategy funds community wellness workers, crisis intervention teams, health liaison, and health outreach as well as specialized projects such as healing lodges, treatment centres, and Aboriginal health access centres that are intended to provide culturally sensitive service through joint management with Aboriginal organizations. Traditional healing practices are encouraged.[206] These and similar programs are, however, an exception and not the norm across the country.

Integration of Indigenous knowledge and healing practices in Canada, in partnership with Inuit, Métis, and First Nations communities, continues to be fragmented and implemented on an ad hoc basis.[207] A literature review conducted in 2008 confirmed the success of community-based addictions programs as an alternative to treatment of individuals at distant residential addictions facilities. It warned that better documentation of the results of such programs was required, but that they appear to depend on long-term funding and infrastructure, and strong community leadership and engagement.[208]

To underline the importance of traditional medicine, it is worth noting here a groundbreaking ruling from an Ontario Court in November 2014 that determined that a mother from the Six Nations of the Grand River Reserve had the right to withdraw her eleven-year-old daughter from a course of chemotherapy in favour of traditional medicine. Justice Gethin Edward ruled that "the decision to pursue traditional medicine for her daughter J. J. is her aboriginal right." He went on in his judgment to say, "the point is traditional medicine continues to be practiced on Six Nations as it was prior to European contact and in this Court's view there is no question it forms an integral part of who the Six Nations are ... a practice that has been rooted in their culture from its beginnings."[209] In a later "clarification" of that ruling, Justice Edward stated that "recognition and implementation of the right to use traditional medicines must remain consistent with the principle that the best interests of the child remain paramount." He elaborated,

> In law as well as in practice, then, the Haudenosaunee have both an aboriginal right to use their own traditional medicines and health practices, and the same right as other people in Ontario to use the medicines and health practices available to those people. This provides Haudenosaunee culture and knowledge with protection, but it also gives the people unique access to the best we have to offer. Facing an unrelenting enemy, such as cancer, we all hope for and need the very best, especially for our children. For the Haudenosaunee, the two sets of rights mentioned above fulfill the aspirations of the United Nations Declaration on the Rights of Indigenous Peoples, which states in article 24, that "Indigenous peoples have the right to their traditional medicines and to maintain their health

> practices ... Indigenous individuals also have the right to access, without any discrimination, to all social and health services.[210]

23) We call upon all levels of government to:

   i. Increase the number of Aboriginal professionals working in the health-care field.
   ii. Ensure the retention of Aboriginal health-care providers in Aboriginal communities.
   iii. Provide cultural competency training for all health-care professionals.

24) We call upon medical and nursing schools in Canada to require all students to take a course dealing with Aboriginal health issues, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, and Indigenous teachings and practices. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Conclusion

Aboriginal people in Canada suffer levels of poor health that would simply not be tolerated by other Canadians. Aboriginal people have higher mortality rates, higher rates of disease, higher rates of accidental deaths and dramatically higher rates of suicide. Many of these problems stem from the intergenerational legacy of residential schools. The destructive beliefs and behaviours of many students have been passed on to their children and grandchildren as physical and mental health issues.

Trudy King lives in Fort Resolution in the Northwest Territories. Both her father and her ex-husband attended residential school. She reflected on the need for healing in the community:

> There was a residential school here in Fort Res, and there was never ever any healing in this town. Everything is just a big hush-hush. I know there's a lot of abuse here. I learned all that when I left my ex, certain people disclosed to me. And this town needs healing, the people need healing. People in this town don't know how to open up, because every, they kept everything so secret for so many years, and it's still like that, still like that in Fort Res. And there was a residential school here, but there's no healing going on here, and it's still affecting this community. And there's just, like, a big dark cloud over here, and it's still like that. I don't know why I still live here. I used to say it's because my mom's here,

> I can't leave her. My mom's been gone just about fifteen years now, and I'm still here. It's my community, and I, I don't have to run away anywhere to .... But I really believe that this town needs healing, the people need healing, the leaders, everybody. Until that happens, everything is gonna be secrets.[illegible]

There is a need to close the health gap that exists between Aboriginal and non-Aboriginal Canadians. Unfortunately, matters are getting worse, not better, since the residential schools settlement and the prime minister's apology. The decision to allow the Aboriginal Healing Foundation and other Aboriginal health organizations to wither and die was an alarming step backwards given the costs of crisis health interventions and the deeper causes of Aboriginal ill health, including the legacy of residential schools.

Other countries, especially Australia, offer models of reconciliatory policies that Canada could follow. Australia set specific goals for closing various gaps—including health-related gaps—between the Aboriginal and the non-Aboriginal population.

The Truth and Reconciliation Commission is concerned that Canadian governments have not made comparable, measurable commitments. Furthermore, there is a continuing erosion of funds for the Aboriginal agencies that were making the greatest progress in community-based healing efforts; and there is ongoing erosion of agencies that can provide credible data about the gaps.

The Royal Commission on Aboriginal Peoples recognized that there is a growing convergence between Western and Aboriginal understandings of health and wellness.[illegible] This convergence has, if anything, increased in the almost twenty years since RCAP's report was released. Today, the importance of prenatal care, early childhood development, diet, and mental health are much better recognized in Western medicine. In addition, there is increasing recognition about how environmental degradation, poor living conditions, poor education, and a lack of self-determination over one's life can manifest itself in ill health.

Although there is convergence that provides some grounds for reconciliation between Aboriginal and non-Aboriginal perspectives on health, this convergence should not be an excuse for continuing to deprive Aboriginal people of control over their health care. To ensure that the residential school experience is not being repeated in some other guise, the Government of Canada must continue to measure and compare the health indicators of Aboriginal people and non-Aboriginal Canadians. The need for equal outcomes is also supported by the fact that Aboriginal and Treaty rights and the *UN Declaration of the Rights of Indigenous Peoples* guarantee a right to equitable Aboriginal health care.

Finally, the principle of self-determination runs throughout all of our Calls to Action in this volume and is particularly important with respect to health. As RCAP noted so clearly in its report,

> Whole health, in the full sense of the term, does not depend primarily on the mode of operation of health and healing services—as important as they are. Whole health depends as much or more on the design of the political and economic systems that organize relations of power and productivity in Canadian society. For Aboriginal people, those systems have been working badly. Before whole health can be achieved, they must begin to work well.[illegible]

Residential schools inflicted grave harms on Aboriginal peoples. Self-determination holds out the best hope for effective approaches that will begin to counter the harmful legacy of the schools. Moreover, the very act of according Aboriginal peoples the respect to conduct their own affairs will help renounce the colonial and racist views about Aboriginal inferiority that informed the failed residential schools project.

Self-determination holds the key to better Aboriginal health by allowing communities to develop programs that are suited to their own needs, and to do so in a holistic way, avoiding the jurisdictional disputes that have plagued progress in health and so many other areas where the residential schools still cast a large shadow.

CHAPTER [illegible]

A denial of justice

Introduction

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The influence of the criminal justice system

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and skeptical of Aboriginal reports of abuse. As a result, there were very few prosecutions for abuse while the schools were in operation.[17] Poor pay, poor screening, limited supervision, the reassignment of perpetrators, and the normalization of abusive behaviour all increased the vulnerability of students to adult and student predators. It is also clear that abuse was often 'hushed up': people were dismissed rather than prosecuted, parents were not informed, and children were not provided with supports or counselling.[18] The police investigations that took place in the 1990s were almost invariably occasioned in response to organized efforts on the part of the former students themselves.[19]

The stories of these investigations are described in greater detail in the history volumes of the Commission's Final Report: *Canada's Residential Schools: The History, Part 1, Origins to 1939*, and *Canada's Residential Schools: The History, Part 2, 1939 to 2000*. These early convictions carry important legal weight. They demonstrate that the abuses at the residential school were recognized as criminal offences at that time, which casts doubt on officials' later assertions that they were unaware that such abuses were criminal in nature. Even if students were not the immediate victims of abuse, they were victims of collateral violence, for they often witnessed or otherwise became aware of the abuse. Memories of violence and abuse stayed with Survivors decades after they left the schools.

Dale Young recalled a child being killed in the residential school in Elkhorn, Manitoba:

> I remember one, there was all these screams, and there was blood over the, the walls. [Crying] ... and we were told that if we, if we were, if we ever told, or tried to run away, we would, the same thing would happen to us. [Crying] So, it was a dangerous time for, for children, and for me at that, those days. [Crying] We never really knew who would be next to be murdered because we witnessed one already. [Crying][20]

Young struggled with this memory and "bad nightmares for years." She eventually reported the incident to the police as an adult:

> The RCMP investigated, they said they couldn't find anything. They came back and told me that they found no evidence of what I was talking about, and but it was not something that I would make up. The thing about all of this violence that happened in these schools is that they had such free access to us, and there was no one there to protect us. They, they had absolute authority over all the violence they committed on, on me, and, and who, all the other children that were there as well.[21]

The RCMP reports to having investigated fifteen deaths in the schools, but no charges were laid as they concluded that all the deaths were accidental or due to illness.[22]

The often-strained relations between Aboriginal people and the police in Canada is directly connected to the history of their experience of policing at residential schools. Not only did the police coercively enforce attendance at residential school, but they also failed to protect the children from serious crimes while they were in the schools.

It has been important for the Commission to understand how the Canadian legal system responded to residential schools in order to understand the full legacy of the harms experienced by Survivors. In the next section, four separate police investigations will be highlighted: two in British Columbia, one in the Northwest Territories, and one in Ontario. Each of the following investigations points to different failures of the justice system, failures that have often led Aboriginal people to view the system with a mixture of suspicion and fear.

The RCMP task force in British Columbia

The Nuu-chah-nulth Tribal Council (NTC), a body that coordinates political action amongst the fourteen Nuu-chah-nulth First Nations on the west coast of Vancouver Island, undertook a major study of the impact of residential schools on its members in 1992. In 1996, the NTC published *Indian Residential Schools: The Nuu-chah-nulth Experience*, a report that contains excerpts from interviews with former students, as well as several former teachers. The report states that eighty-three of the ninety-six Survivors who were interviewed reported being physically abused, and thirty reported being sexually abused.[illegible] The Tribal Council's report did not place primary emphasis on criminal investigations. It first called on the federal government to issue an apology, and then stated that a public inquiry was necessary because the abuse it revealed was only 'the tip of the iceberg.'

In November 1994, tribal council representatives presented their findings to members of the Port Alberni Royal Canadian Mounted Police detachment. In light of the number of potential cases that the Nuu-Chah-Nulth inquiry might give rise to, it soon became apparent to the RCMP that it needed to develop a coordinated response to the issue; it established the Native Indian Residential School Task Force. The province-wide task force was composed of officers from the central E Division Major Crime Section, as well as investigators from eight local subdivisions. The task force commenced its work in 1995 and remained in operation for over eight years. It investigated 974 allegations of criminal misconduct in British Columbia schools.

Four hundred and fifty-three people said they had been criminally victimized. Another 245 people were identified as possible victims, meaning that while there was credible evidence to believe they had been victimized, they had not contacted the police. That suggests there were nearly 700 potential victims. The task force identified 186 suspects. Complaints came from former students of 15 of the residential schools in British Columbia. There were 515 alleged sexual assaults (involving 374 victims), 435 alleged physical assaults (involving 223 victims), and 23 other alleged offences (involving 19 victims).

Yet, in its final report, the task force stated that despite "thousands of hours of investigative time and well over a million dollars in salaries and other expenses ... relatively few criminal prosecutions resulted."[24]

Its final report stated that, when the task force was formed in 1994, it

> was immediately greeted with anxiety and mistrust from the very people it sought to assist. The Aboriginal community expressed alarm at the potential impact of the investigation on their people, citing the high suicide and substance abuse rates that followed previous investigations. Their other concerns were centred around their historic mistrust of both the RCMP and the Court system. This situation was further aggravated by the RCMP's earlier role as truant officers supporting the very system that was now under criminal investigation.[25]

The Truth and Reconciliation Commission's review concluded that the task force led to the prosecution and conviction of only five men. Three of the five had already been charged and convicted of abusing residential school students before the task force was formed. The task force final report noted a further problem. It stated that "a very common situation that kept occurring over and over again" was that provincial Crown counsel refused to prosecute without corroboration in the form of physical evidence.[26] This approach was based on an unwillingness to take the complainant's own evidence as sufficient to justify a prosecution. It shows a reluctance to take the evidence of Aboriginal people as worthy of belief.

Since 1982, the legal requirement for corroboration was specifically rescinded for sexual offences and never was required for non-sexual offences.[27] The RCMP's own report acknowledged that corroboration was no longer a legal requirement, but that it was nevertheless seen as a practical prerequisite for the prosecution of these cases.[28]

There is also some evidence in the RCMP report that claims of physical assault were viewed as less serious than claims of sexual abuse. The report suggests that complaints of physical abuse "quite often ... were the result of a culture clash between the rigid 'spare the rod, spoil the child' Christian attitude, and the more permissive Native tradition of child-rearing."[29]

The RCMP's report also notes that almost every complainant told the RCMP about their loss of culture as well as the physical and sexual abuse that they suffered. This reaffirms that loss of culture and language was extremely important to many former students who looked to both the criminal and civil legal systems for justice.

Unfortunately, the Canadian legal system ignored the harms of loss of culture and language. The RCMP's E Division candidly explained, "enforced deprivation of Native culture was official Canadian government policy sanctioned by the *Indian Act*. As such, these complaints are beyond the scope of this investigation and will have to be dealt with in another forum."[30]

The RCMP, to its credit, responded to those concerns by negotiating a protocol in which the force agreed not to forward a case for prosecution without the complainant's consent. However, the RCMP eventually betrayed the trust of the Survivors when it shared files involving investigations into the Kuper Island residential school with the federal Department of Justice, which was defending the government in civil actions brought by former students. When the RCMP requested that the documents be returned, Department of Justice lawyers refused. They insisted that the RCMP documents were also the property of the federal Crown.[31] This argument ignored the constitutional principle of police independence and suggested to Survivors that the RCMP was not acting as an impartial law enforcer but as an agent of the federal government, which was actively opposing the Survivors' civil claims.

The Government of Canada stubbornly resisted RCMP demands for information. This made it necessary for the RCMP to obtain and execute multiple search warrants on the Department of Indian Affairs in Hull, Québec, in order to obtain information relevant to the criminal investigation.[32] The RCMP displayed praiseworthy independence and determination in seeking the information. Nevertheless, it is shocking to the Commission that the Department of Indian Affairs would resist cooperation with an important criminal investigation in a manner that required the RCMP to obtain search warrants to obtain material.

25) We call upon the federal government to establish a written policy which reaffirms the independence of the Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.

Turquetil Hall, Chesterfield Inlet investigations

As was the case with the E Division Task Force, the investigation into sexual abuse at Turquetil Hall only came after Aboriginal people took the initiative to examine and reveal the abuses they suffered. In 1991, Marius Tungilik, a former student at Turquetil Hall in Chesterfield Inlet in what is now Nunavut, told a hearing of the Royal Commission on Aboriginal Peoples about being sexually abused at the school. Two years later, he and others helped organize a reunion of students, at which about forty students revealed, while participating in healing circles, that they had suffered sexual abuse.

The former students at the reunion did not stress criminal investigations as an effective remedy. They asked for an acceptable apology, resources so that Survivors, dependents, and abusers could receive therapy, and "a comprehensive independent public inquiry" to investigate sexual, physical, and emotional abuse at Turquetil Hall/Bernier School.[33]

Bishop Reynald Rouleau of the Hudson Bay Diocese attended the 1993 reunion. He stated that he recognized "the courage of many students who accepted to reveal publicly some aspects of their personal life and of their faith ... I am very sorry for those people toward whom abuses have been committed.... According to the limited means I may have, I am willing to collaborate in the healing of those individuals who are ready to get committed in their own healing."[34] Marius Tungilik noted that nothing in the bishop's statement admitted that sexual abuse had taken place.[35]

Two RCMP officers investigated 150 allegations of physical abuse and 86 allegations of sexual abuse made by students at Joseph Bernier School in Chesterfield Inlet. The RCMP interviewed 346 former students and almost all of the living staff all over Canada. The RCMP compiled a list of 13 sexual abuse charges against 3 Roman Catholic clergy and 41 charges against a lay staff member. The RCMP expressed confidence that they could obtain convictions.[36] Of the 23 staff identified as suspects, only 4 were deceased. A report written for the government of the Northwest Territories concluded that "serious incidents of sexual assault did in fact occur at the Chesterfield Inlet school during its years of operation."[37] The allegations "of abuse include fondling of the breast areas of female students, the genital areas of female students, the genital areas of male students and inappropriate sexual exhibition. An aura of fear, confusion and silence appear to surround the students' experiences at the time ... While many students indicated that they disliked the behaviour, felt it was wrong, and were afraid of it, it is apparent that they felt on many occasions powerless to prevent repeat occurrences."[38] However, when the report was released in June 1995, it was also announced that even the charges contemplated the previous year would not go forward.[39]

In 1996, Marius Tungilik, who had served in civil service positions in both the federal and the Northwest Territories governments, accepted an apology from Bishop Rouleau. He observed at that time, "Today's a historic day in Nunavut. Today, the bishop acknowledged the pain we went through and that is very special to me." At the same time, he told the church congregation, "I felt betrayed very badly by the church for so long ... I felt betrayed, so badly, by my fellow Inuit, the church-goers who tried so hard to make us feel bad for what we did." Marius Tungilik died in 2012, at the age of fifty-five.[40] Both his wife and daughter shared with the Commission the many difficulties that he struggled with throughout his life because of the abuse he suffered in residential school and the failure of the justice system to recognize the abuse he suffered.

St. Anne's residential school

In 1992 former students of the Fort Albany school in Northern Ontario organized a reunion that attracted about three hundred people.[41] The reunion included a special panel on physical and sexual abuse at the school. Thirty students addressed the panel. The report of the panel stated that

> Of the 19 men who gave testimony, 10 were sexually abused. Almost all of them were physically abused in other ways; spiritually abused, humiliated, strapped, hit with rulers, hair pulled and dragged by the hair, stabbed with a pencil, made to eat their vomit, etc. etc.
>
> Of the 11 women who gave testimony, 2 were sexually abused. Almost all of them were physically abused in a variety of ways, including strapping, being made to sit in the electric chair, being made to eat their vomit, being made to kneel on concrete floors, locked away in dark basements, being wrongly punished for things they did not do, etc. etc.[42]

The reunion report made further reference to the use of an electric chair at the school:

> Several people talked about the electric chair that was used in the girls [*sic*] playroom. It seems odd how an electric chair can find its way into a Residential School; however, it seems to have been brought to the school for fun. Nevertheless, all the people who remembered the electric chair do not remember it in fun, but with pain and horror.[43]

Like other Survivor events at the time, the reunion report did not emphasize criminal investigations and prosecutions as the appropriate remedial response. The report called for an independent inquiry of Elders and former students to be appointed to examine what happened. It also called for compensation and treatment for those who had spoken at the reunion about being abused at the school. The report noted,

> The individuals who gave testimony and disclosed physical, psychological, sexual or spiritual abuse need immediate attention. It was a profound and painful event for the victims to come forward and required much courage on their part. They must not be let down now. They must receive ongoing counselling and healing to be determined before they leave the community.[44]

The reunion included healing circles that lasted from five to eight hours to help the former students deal with the aftermath of the abuse. No one was obliged to talk in the healing circles, which were free "from destructive criticism" and provided a "safe place for the disclosure of abuse and its aftermath." In the course of the healing circle process, many Survivors disclosed "a lack of self-esteem, alcoholism, domestic violence, marriage break down and a lack of parenting skills."[45]

Following the reunion, Edmund Metatawabin, who was then the chief of the Fort Albany First Nation, asked the Ontario Provincial Police to investigate complaints of the treatment that students received at the school in the 1950s and 1960s. In 1997, seven former staff members were charged with a variety of offences.[46] None of the documents made available to the Truth and Reconciliation Commission indicate that charges were ever laid in relation to the use of the electric chair. Five former staff were convicted of assault but the sentences were generally lenient.[47] More importantly, Survivors were subject to adversarial cross-examination that suggested that they were lying simply to bolster their civil claims. The evidence available to the Commission suggests that the prosecutions were poorly managed, not a good vehicle for the discovery of the truth and re-victimized Survivors.

Bishop Hubert O'Connor

The story of the prolonged and ultimately failed prosecution of Hubert O'Connor reveals much about the limits of the existing criminal justice system to respond to the harms of residential schools. O'Connor was the principal of the St. Joseph's residential school in Williams Lake, BC, from 1961 to 1967. He eventually became a bishop but resigned that position in 1991 after being charged with two counts of raping two Aboriginal employees and a former student of the school and having indecently assaulted two students between 1964 and 1967. He was ordered to stand trial on those charges. He was the highest-ranking Roman Catholic official charged in relation to abuses at residential schools.

O'Connor did not deny having sexual relations with the complainants but argued that they had consented, even though he was a person with authority over them. As in other prosecutions, the process of an adversarial trial was particularly hard on the complainants. It put them on trial and further victimized them.

In June 1992, Bishop O'Connor's lawyer obtained the following sweeping pretrial disclosure order:

> THIS COURT ORDERS that Crown Counsel produce names, addresses and telephone numbers of therapists, counsellors, psychologists or psychiatrists who have treated any of the complainants with respect to allegations of sexual assault or sexual abuse.
>
> THIS COURT FURTHER ORDERS that the complainants authorize all therapists, counsellors, psychologists and psychiatrists who have treated any of them with respect to allegations of sexual assault or sexual abuse, to produce to the Crown copies of their complete file contents and any other related material including all documents, notes, records, reports, tape recordings and videotapes, and the Crown to provide copies of all this material to counsel for the accused forthwith.

> THIS COURT FURTHER ORDERS that the complainants authorize the Crown to obtain all school and employment records while they were in attendance at St. Joseph's Mission School and that the Crown provide those records to counsel for the accused forthwith.
>
> THIS COURT FURTHER ORDERS that the complainants authorize the production of all medical records from the period of time when they were resident at St. Joseph's Mission School as either students or employees.[illegible]

These orders were obtained without hearing from the complainants and without apparent consideration of their privacy interests. It meant that, as a price of the prosecution going forward, the complainants would have to give up their privacy with respect to their medical, school, and employment records. The former students understandably refused to grant consent to such a massive and open-ended invasion of their privacy.

There was prolonged pretrial litigation with O'Connor bringing repeated motions that proceedings be stayed because of non-disclosure. The Cariboo Tribal Council wrote a letter to the trial judge to express its concerns about the possibility of the prosecution being stayed and their concern about the victimization of the community. The trial judge admonished the tribal council for inappropriately communicating with a judge about a case out of court.[illegible]

The judge ordered that therapeutic files be disclosed, ruling that the accused's right to disclosure trumped the privacy rights of the complainants. Further disputes arose from a failure of the Crown prosecutor to fully comply with the disclosure order. The trial judge found that a Crown prosecutor had acted improperly and allowed her personal opposition to the disclosure order to cloud her professional responsibility. O'Connor then made a fifth motion for a stay of proceedings. This time he was successful. The judge concluded,

> To allow the case to proceed would tarnish the integrity of the court. The court is left with no alternative but to order a stay of proceedings on all four counts. In doing so I recognize that the decision will not be readily acceptable to all segments of our society. It will certainly not be popular with many people. I can only encourage such people or groups to carefully consider the reasons for the decision ... Those who will be angered or saddened by the outcome of this case must strive to put themselves in the position of an accused person. They would expect the Crown to fulfill its role to the standard required by law.[illegible]

David Neel, a member of the Kwakiutl Nation of Fort Rupert, BC, noted that the decision revealed "two faces of justice." He wrote, "Bishop O'Connor must face charges and be found guilty or innocent in the eyes of his peers." He added that he "personally would like to have the opportunity to one day believe in the 'justice system.' For the time being, where my people are concerned, it continues to be the injustice system."

Noel also noted that, "It is not only the first nations that need to heal from this period of institutionalized oppression, but our country as well. It continues to be our national shame, as it will be until we come to grips with it."[71]

The stay of proceedings was overturned by the British Columbia Court of Appeal, which concluded that the trial judge had not found sufficient prejudice to the accused or sufficient bad intent by the prosecution to justify the drastic remedy of permanently stopping the prosecution.

The accused then appealed to the Supreme Court, which, in a six to three decision, held that the trial should proceed after all. Justice L'Heureux-Dubé stated for the majority,

> It is clear, at the end of the day, that the Crown was right in trying to protect the interests of justice. The fact that it did so in such a clumsy way should not result in a stay of proceedings, particularly so when no prejudice was demonstrated to the fairness of the accused's trial or to his ability to make full answer and defence.[72]

The Supreme Court used the case to clarify the proper approach to the production and disclosure of records in sexual assault cases. Once therapeutic records had fallen into the hands of the Crown, then the Crown's duty to disclose all relevant material to the accused would apply. Neither the privacy interests of the complainants or any privilege they might assert could be balanced against the accused's rights.

This part of the Supreme Court's decision was widely criticized. Parliament intervened and enacted new legislation that instructed judges to balance the accused's right to make full answer and defence with the complainant's right to privacy and equality before deciding whether to order the production of the record to the judge or its subsequent disclosure to the accused.[73]

As a result of the Supreme Court's ruling, a new trial was ordered for Bishop O'Connor. At the new trial, the nineteen-year-old complainant who had been O'Connor's secretary and also a member of the school's travelling pipe band had testified that she had removed her clothes because she was afraid of losing her job and her opportunity to travel with the band. In his own defence, O'Connor took the stand. He defended the two rape charges by arguing that his former students had consented to sexual intercourse. He denied the two other charges of indecent assault.

O'Connor was convicted of one count of rape and one count of indecent assault and acquitted on the two other counts. The trial judge stressed inconsistencies between what the complainants told the police and their testimony, even though inconsistencies were in part caused by the age of the case and the prolonged nature of the preliminary battle over disclosure.

The trial judge sentenced O'Connor to two and half years imprisonment for the rape and three months for the indecent assault to be served concurrently. The judge also considered victim impact statements, including that of the victim in the rape conviction who stated that

> The effects of this trauma have had a devastating impact on my emotional well-being. As a young woman during my twenties and thirties, I had little or no life after this tragic event. I felt I could trust no one. I felt helpless and I could not tell anyone what happened. I thought they would not believe me or that they would not understand the shame I carried for years. Many times I felt vulnerable and I was an object and not a person.[illegible]

The three-month sentence for the indecent assault conviction seems inordinately light, given that it involved an abuse of power against a young girl who was a student at the school. However, the story didn't end there. O'Connor immediately appealed the two convictions. He sought but was denied bail.[illegible] He renewed the request for bail or supervised freedom in the community and was granted bail pending appeal after serving six and a half months in prison.[illegible]

In the end, this was the only jail time he served. The British Columbia Court of Appeal overturned both the rape and indecent assault convictions. It ordered that O'Connor face a new trial on the rape charge. The Court of Appeal also entered an acquittal on the indecent assault charge on the basis that the verdict was unreasonable given inconsistencies in the evidence.[illegible]

The new trial of Bishop O'Connor on the one remaining rape charge was never held. Instead, a long healing circle was held at Alkali Lake. It was attended by about seventy members of the community, O'Connor and his lawyers, prosecutors and senior justice officials, and one of the complainants. The complainant had already testified three times at court. She said she was not sure if she "had the strength or the courage to go through it all again." The complainant was frustrated that the court system had never let her express to O'Connor her feelings about the pain he had caused her. Her sister-in-law said that a circle based on trust, respect, and honesty was "one of the most painful and fearful processes O'Connor has ever had to go through," probably more so than another trial.[illegible]

In the healing circle, O'Connor did not admit to raping the complainant. He did, however, acknowledge that it was wrong for him as her employer and former school principal to have sex with the complainant when she was eighteen years of age. The complainant told reporters that "it was nice to get out of the control of the court system and out of the control of O'Connor himself. There was no way at Monday's Healing Circle that he got away with anything. I would say he felt some of the fear and pain that natives have felt for all these years." She recognized that O'Connor's apology was not an admission of criminal guilt, but the complainant said that "the apology to me meant a lot because it came from him personally. The important thing for me and my people is to move beyond the constant pain and to become stronger."[illegible]

The denial of access to civil justice: Systemic issues

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such is in a better position to defend itself in historical litigation after the time limit in a statute of limitations has passed.

The federal government possessed many of the documents that would establish whether allegations about long-ago events were accurate. This is especially true in the Aboriginal context where the Truth and Reconciliation Commission itself has discovered that the federal government has a wealth of documents about residential schools that were not always disclosed to this Commission as fully and promptly as they should have been. Nevertheless, the Government of Canada, as well as the churches, has frequently and successfully raised statute-of-limitations defences in residential school litigation. Canadian courts applied statutes of limitations to bar many claims made by residential school Survivors relating to loss of language, culture, and family relations. Some courts even applied statutes of limitations to bar claims relating to sexual abuse. For example, the Manitoba Court of Appeal concluded in a 2001 residential school case that the Oblates had "a vested right to be immune from claims 30 years after the respondents left the school." It stressed that it would be unfair for the Oblates "to have the sword of Damocles hanging over their head forever" and that it was up to the legislature to intervene "if societal standards of the past are later regarded as unacceptable or unjust in the eyes of a new generation."[71] The next year, the Manitoba legislature amended the *Limitation of Actions Act* so that it would not apply to actions based on assaults if they were of a sexual nature or other assaults if the plaintiff was dependent on one of the persons alleged to have committed the abuse.[72]

Not all legislative reforms during this era were as enlightened. Alberta enacted a ten-year ultimate limitation period that would apply regardless of when a cause of action was reasonably discoverable.[73] This forced many Survivors to rush to file residential school claims.[74] Some provinces, such as British Columbia, only provided exemptions from statutes of limitations for childhood sexual abuse, and the BC Court of Appeal refused to extend the exemption for childhood sexual abuse to other forms of abuse of children.[75]

The early civil cases involving William Starr all focused on sexual abuse even though Survivors were concerned about a much broader range of harms that they suffered at residential school. Saskatchewan's *Limitations of Actions Act* provided that no limitation periods applied to claims relating to "misconduct of a sexual nature."[76] This meant that it was easier and sometimes necessary for lawyers representing the plaintiffs to focus on sexual misconduct rather than other matters.

26) We call upon federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform with the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.

Third-party claims against Aboriginal bands

Canada employed aggressive litigation tactics in some of the cases arising from William Starr's abuse of students. In two instances, the Attorney General of Canada sought and was granted permission to make a third-party claim asserting that the plaintiff's own First Nation (the Gordon First Nation) was responsible for the abuse by sending children to the residential school and having an advisory board for the school.[77] This defence strategy not only added additional expense and delay to the litigation but sought to blame a First Nation that was itself victimized by the residential school.

The "crumbling skull" argument

Even in cases where Canada accepted vicarious liability for sexual abuse, the Survivors faced difficulties in establishing damages. The Attorney General of Canada had considerable success with so-called "crumbling skull" arguments. These arguments assert that while the Survivors experienced difficulties in their lives, these difficulties were not sufficiently related to being sexually abused in the schools to be compensable. The argument was that Survivors were already damaged before they came to the schools. They had "crumbling skulls" and would have experienced difficulties, such as unemployment, addictions, and imprisonment, even if they had not been abused in the schools.[78]

In one William Starr case, the trial judge reduced a successful plaintiff's damages for loss of earnings by 50% on the basis that his troubled family life meant he would have made less than an average worker even if Starr had not sexually abused him. The judge stated,

> The plaintiff was raised in poverty. He was the youngest of eight children born to an alcoholic mother. He never knew his father (apparently all his siblings had different fathers). His mother was unable to care for her children and, consequently, the plaintiff was removed from her care and placed in the student residence ... He attended several different schools and was introduced to alcohol and drugs at an early age by his peers. His siblings have all had problems with drugs and/or alcohol and difficulty in holding employment. Many do not have a high school education and none have post-secondary education.[79]

The court did not appear to consider the possibility that the life and home situation upon which it relied to reduce the plaintiff's damages may have themselves, been the result of residential school experiences, or past government actions. This approach to damages essentially blamed the victim and his family for many of the problems that the victim experienced.

Re-victimization

Several of the Starr cases that were settled still resulted in adversarial litigation about the terms of the settlement. In 1998, Canada successfully opposed paying for treatments for a number of plaintiffs even though the treatment expenses had been capped by the settlement at $15,000, and even though a therapist mutually approved by Canada and the plaintiff had proposed the treatment. The rejected treatment plans included those that would have provided money for post-secondary education, alcohol addiction treatment,[80] and a fitness club membership.[81] The rejection of these proposed treatments as luxuries unrelated to the harms also fed into media and public perceptions that the Survivors were abusing the system. The courts at times took very narrow approaches to the harms caused by residential schools by, for example, dismissing alcohol addiction treatment as not related to the admitted abuse that occurred.

Even when the courts approved treatment plans, they demonstrated distrust that the Survivors would abuse the funds that Canada had agreed to pay by specifying in detail what sort of payments would be allowed to cover travel and accommodation costs. In such cases, the Canadian legal system remained a colonial and an intrusive presence in the lives of the Survivors that frustrated reasonable healing attempts.

Breach of fiduciary and statutory duty

Survivors brought a wide variety of different legal claims in their residential school litigation. Breach of fiduciary duty was often alleged because of the long-standing trust relationship between Aboriginal people and the Crown as well as the dependency of the children in the schools. This cause of action also had the advantage of avoiding prescription periods. The courts have recognized a distinct fiduciary duty designed to protect the relationship between the Crown and Aboriginal peoples. Claims for breach of fiduciary duty had the potential to highlight how the schools betrayed Aboriginal children, highlighting the fact that those abused in the schools were children and they were Aboriginal and that the government and the churches put their own interests in assimilation, indoctrination, and saving money before the interests of the Aboriginal children. However, the courts frequently refused to find breach of fiduciary duty. Judges noted that litigants were unable to prove there was any intentional dishonesty on the part of those who held the fiduciary duty.[82]

Another claim of liability that was frequently dismissed by the courts was that of direct or statutory duty. Lawyers for the plaintiffs claimed that Canada had a direct duty that it could not delegate or hand off to the churches with respect to the treatment of the students. The statutory duty approach would emphasize that the government was directly at fault for failing to protect the children in the schools and not simply vicariously responsible for the wrongdoing of individual wrongdoers employed in the schools. However, claims based on breach of fiduciary and statutory duty frequently failed.[83]

Denying loss of family, language, and culture

The courts were reluctant to recognize claims that Survivors made seeking compensation for loss of family, language, and culture. Often these claims were dismissed on the basis that they had been brought too late and that statute of limitation defences applied to these claims, in a way that they did not apply to claims of sexual and sometimes serious physical abuse.

The Alberta courts dismissed such claims and the Ontario Court of Appeal found that children of Survivors of residential schools could not bring claims under the *Family Law Reform Act* because it did not apply retroactively to the schools.[84] The eventual settlement of the litigation was limited to claims made by the living Survivors of the schools. One British Columbia court specifically noted that it was "not here assessing damages for the cultural destruction suffered by native peoples."[85]

Considering that one element of the *UN Convention on Genocide* involves recognizing that the forcible removal of children from one group to another group for the purpose of wiping out the racial identity of the children is a crime, it is difficult to understand why courts have not been more willing to recognize at least intentional acts of cultural and racial destruction or deprivation as a compensable tort.

Denying loss of Aboriginal and Treaty rights

The creation and operation of residential schools also constituted a breach of Treaty rights, which recognized that education was important for Aboriginal people but was to be provided on reserves and on the terms that Aboriginal communities desired. Treaty 1, for example, provides that, "Her Majesty agrees to maintain a school on each reserve hereby made, whenever the Indians of the reserve should desire it."[86] Treaty 3, Treaty 5, and Treaty 6 all provide that "Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to her Government of her Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it."[87]

Despite such clear language, claims relating to breach of Aboriginal and Treaty rights did not have much success in the courts. In a number of cases, the courts ruled that Aboriginal and Treaty rights could not be positively asserted by individuals.[88] This approach had the effect of eroding the power of Aboriginal and Treaty rights as constitutional rights. Other Canadians are able to assert constitutional rights in individual proceedings for damages, but by classifying Aboriginal and Treaty rights as collective rights, the courts were able to deny individual claims based on them.

Class actions

In a class-action lawsuit one party sues as a representative of a larger 'class' of people. Such suits are seen to serve a public benefit because they reduce overall costs by eliminating the need for repetitive hearings, allow for greater access to the courts, and can modify the behaviour of actual and potential wrongdoers.[89] Changes in Canadian law in the 1990s created the opportunity for Survivors to make use of class-action lawsuits to pursue their claims for compensation. As late as 1991, such suits were permitted only in Québec.[90] Ontario adopted legislation allowing for class-action suits in 1992.[91] British Columbia's class-action legislation came into force in 1995.[92] Alberta adopted its legislation in 2003. In the following years, most other provinces adopted similar legislation.[93]

In October 1998, a group of Survivors of the Mohawk Institute in Brantford, Ontario, filed a statement of claim in the Ontario Superior Court on behalf of all students who attended the school between the years 1922 to 1969, as well as their families.[94] The plaintiffs, who were led by Marlene Cloud, claimed $2.3 billion in damages from the federal government, the General Synod of the Anglican Church, the New England Company (the missionary society that operated the school), and the local Anglican diocese, for the sustained, systematic program of physical, emotional, spiritual, and cultural abuse they suffered.[95] Cloud and the other Survivors claimed damages for a breach of fiduciary duties, breaches of the *Family Law Act*, loss of culture and language, and breach of Treaty and Aboriginal rights.[96]

In June 2000, Charles Baxter Sr., Elijah Baxter, and others filed a class-action lawsuit against the federal government in the Ontario Superior Court. The statement of claim sought damages for negligence, breach of statutory duties under the *Indian Act*, and breach of Treaty obligations.[97] Since it included claims on behalf of students who attended residential schools throughout Canada, it was often referred to as the "national class action."[98] Over time, Survivor associations and litigants from around the country joined the Baxter class-action suit.

In October 2001, Justice Roland J. Haines of the Ontario Superior Court declined to certify the *Cloud* case, saying that that the experiences of the students were too diverse to constitute a representative class, that many of the claims would be barred by statute of limitations provisions, and that the plaintiffs failed to establish that a class-action suit was the preferable procedure for their claims.[99] The decision was upheld by the Ontario Divisional Court.[100] In December 2004, however, the Ontario Court of Appeal overturned the earlier rulings and certified the *Cloud* case.[101] The Court of Appeal stressed that that class actions were preferable to individual actions because they would increase "access to justice."[102] This was a very important decision and the Supreme Court's refusal to hear an appeal of this decision played an important role in encouraging the government and the churches to settle all of the claims through a national class action settlement agreement.

Lawyer fees

Throughout the civil litigation period, many residential school Survivors were unable to afford the legal fees required to file suit against the federal government. As a result, individual Survivors were usually required to access legal services on a contingency basis, which meant that they would not pay their lawyers unless they were successful in obtaining compensation. In most residential school litigation, the contingency fee arrangements provided that lawyers would receive at least 30% of any compensation awarded to the Survivors. Contingency fees had traditionally been prohibited in Canada because of a concern that lawyers might act unethically if they had a financial stake in the litigation. These restrictions were eased in many jurisdictions to increase access to justice. This change combined with the new availability of class actions made residential school litigation economically feasible.

The Commission acknowledges that residential school litigation would likely not have happened without the possibility of contingency fees that compensated lawyers for investing in the cases of Survivors who were unable to pay legal fees. In most cases, publicly funded legal aid or any other form of public funding for such litigation was not available. However, the payment of legal fees became one of the most difficult issues in reaching the settlement. The combination or rules governing contingency fees and class actions had provided lawyers with an incentive both before and after the settlement to represent as many Survivors as possible, thereby increasing their legal fees. In some, but by no means all, cases this resulted in Survivors not being well understood or served by their own lawyers.

There were numerous reports of aggressive, damaging, and sometimes unethical and illegal tactics employed by some lawyers in recruiting residential school Survivors as clients. Several lawyers were the subject of law society complaints and reprimands about the way they recruited and represented residential school Survivors and collected legal fees. In the end, the Indian Residential Schools Settlement Agreement provided a process under which one firm, the Merchant Law Group, would receive between $25 and $40 million in fees.[103] The Law Society of Saskatchewan, in a decision later upheld by the Court of Appeal, reprimanded Tony Merchant in connection with a misleading solicitation letter that suggested that the Survivors "had nothing to lose."

In late January 2015, the Government of Canada filed a suit against the Merchant Law Group alleging that the group claimed millions of dollars in fees that were "intentionally inflated, duplicated or simply fabricated." The suit also alleges that some individual lawyers billed for more than twenty-four hours of work in a single day.[104]

Response of the law societies

Although many lawyers worked hard for Survivors and tried to be sensitive, some lawyers took advantage of their clients and this abuse simply added to the legacy of residential schools. It also has influenced the attitudes of Aboriginal people towards the Canadian legal system.

In August of 2000, the Canadian Bar Association recognized some of the difficulties that aggressive and culturally insensitive solicitations created for Survivors and enacted the following resolution:

> WHEREAS survivors of Aboriginal residential schools are often vulnerable and in need of healing as well as legal assistance;
>
> WHEREAS the identity of persons who attended Aboriginal residential schools is available without their consent;
>
> WHEREAS survivors of Aboriginal residential schools wanting to seek compensation from the Government of Canada and the churches involved should have legal assistance which takes into account the potential impact on their well-being when they begin to address their abuse;
>
> BE IT RESOLVED THAT:
>
> 1. The Canadian Bar Association urge each law society to adopt the following guidelines for recommended conduct for lawyers acting or seeking to act for survivors of Aboriginal residential schools, that recognizes their vulnerability and need for healing:
>
> (a) Lawyers should not initiate communications with individual survivors of Aboriginal residential schools to solicit them as clients or inquire as to whether they were sexually assaulted;
>
> (b) Lawyers should not accept retainers until they have met in person with the client, whenever reasonably possible;
>
> (c) Lawyers should recognize that survivors had control taken from their lives when they were children and therefore, as clients, should be given as much control as possible over the direction of their case;

(d) Lawyers should recognize that survivors may be seriously damaged from their experience, which may be aggravated by having to relive their childhood abuse, and that healing may be a necessary component of any real settlement for these survivors. Lawyers should therefore be aware of available counselling resources for these clients to ensure that they have opportunities for healing prior to testifying;

(e) Lawyers should recognize that damage to the survivors of Aboriginal residential schools may well include cultural damages from being cut off from their own society, and should endeavour to understand their clients' cultural roots;

(f) Lawyers should recognize that survivors are often at risk of suicide or violence towards others and should ensure appropriate instruction and training for their own employees, including available referrals in time of crisis.[illegible]

27) We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28) We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Slow progress towards compensation

Despite a variety of barriers posed by the legal system, slow progress was being made to win justice for Survivors of residential schools. This progress resulted from a combination of legal and political processes and culminated in the negotiation of the Indian Residential School Settlement Agreement in 2006.

Alternative Dispute Resolution

In 1998 and 1999, there were discussions involving Survivors, Aboriginal organizations, and representatives of the government and the churches that produced a set of principles to guide twelve different pilot initiatives, called Alternative Dispute Resolution Projects (ADR). The principles for the pilot ADR stressed the need for a sensitive and safe approach that would promote "healing, closure and reconciliation." It could include monetary compensation, but also a broad range of remedies including healing, memorialization, and prevention programs.[illegible] Health supports would be provided in recognition that discussing what happened in residential schools was traumatic for many Survivors.

In 2001, the federal government created Indian Residential Schools Resolution Canada as a federal department. It was designed to oversee the ADR process. Under the proposed program, the government required that those claiming injury lasting more than six weeks submit many documents related to their income, treatment, school, and correctional records. The program limited the relief available by not providing compensation for loss of culture or language. It graded injury on a point scale and provided caps on compensation of between $195,000 and $245,000 with the cost of future care being capped at $25,000. Those who claimed injury lasting less than six weeks would receive a maximum of $1,500, which could be raised by additional amounts to a maximum of $3,500 if aggravating circumstances were established.[illegible]

A report produced by the Assembly of First Nations (AFN), released in 2004, was highly critical of the proposed formula: "This cap … ignores the effects of the residential schools on loss of language, culture, family life, parenting and secondary harms to spouses and descendants. There is no provision to recognize or compensate for emotional and spiritual abuse, neglect, forced labour or educational deficits, or their consequences."[illegible] The report advocated a more flexible process that "would be but a part of a holistic process with a truth-sharing component which would be created in consultation with survivors, survivor's families, secondary victims of residential school abuse, First Nation communities, religious entities, Canada and non-Aboriginal Canadians."[illegible]

The report expressed concerns that the caps on compensation were below some awards provided to non-Aboriginal people. It proposed five principles for the equitable settlement of claims:

1. Be inclusive, fair, accessible, and transparent.
2. Offer a holistic and comprehensive response recognizing and addressing all the harms committed in and resulting from residential schools.
3. Respect human dignity and equality and racial and gender equality.
4. Contribute towards reconciliation and healing.
5. Do no harm to Survivors and their families.[illegible]

The report drew attention to an important gap in the government's ADR program—namely, the absence of an Aboriginal perspective. The report stated that true reconciliation and healing would be possible if the AFN's recommended changes to the ADR program were followed.[illegible]

The AFN report recommended a "two-prong strategy." One prong would focus on compensation and the other on "truth-telling, healing and public education." The compensation part would include "a significant lump sum award" to every person who attended residential school "to compensate for the loss of language and culture," combined with another sum tied to each year or part of the year spent in residential school to "recognize emotional harms, including the loss of family life and parental guidance, neglect, depersonalization, denial of a proper education, forced labour, inferior nutrition and health care, and growing up in a climate of fear, apprehension, and ascribed inferiority. As a rule, no adjudication should be necessary for these awards to be made."[illegible]

The second truth-telling and healing track would include "a voluntary truth-sharing and reconciliation process designed to investigate the nature, causes, context and consequences of all the harms resulting from the residential schools legacy. This would include, but not be limited to, harms to individual Survivors, First Nations communities, Survivors' families, the future generations, culture, spirituality, language and relationships between and among all parties involved."[illegible] This recommendation, like those made by groups of Survivors in the early 1990s and subsequently by the Royal Commission on Aboriginal Peoples in 1996 focused on the collective harms of residential schools and collective responses to those harms – a significant contrast to the relentlessly individualistic focus of the litigation that excluded compensation for students who had died and for the children of Survivors.

The inadequacies of the ADR process were also revealed in hearings conducted in February 2005 by the House of Commons's Standing Committee on Aboriginal Affairs and Northern Development. They heard from Flora Merrick, an eighty-eight year old Elder whose $1,500 ADR award was being appealed by the federal government. The issue was whether she should be compensated for "being strapped so severely that my arms were black and blue for several weeks" and for being "locked in a dark room for about two weeks" after she ran away from Portage la Prairie residential school. Merrick explained that she was willing

> to accept the $1,500 award, not as a fair and just settlement, but only due to my age, health, and financial situation. I wanted some closure to my residential school experience, and I could use the money, even as small as it was. I am very angry and upset that the government would be so mean-spirited as to deny me even this small amount of compensation.... I'm very upset and angry, not only for myself, but also for all residential school survivors.[illegible]

The Committee recognized the urgency of the matter and noted that "on average some [illegible] to [illegible] former students die each week uncompensated and bearing the grief of their experience to the grave." The Committee condemned the ADR process unanimously and in very strong terms, concluding that it "regrets the manner with which the Government has administered the Indian Residential Schools Claims program" and that the ADR process should be terminated. It recommended that "on an urgent basis, with consideration for the frailty and short life expectancy of the former students," the federal government should move to create expert-led negotiations with former students to secure a court-approved settlement.[illegible]

The Settlement and its aftermath

On May 30, 2005, the federal government appointed former Supreme Court Justice Frank Iacobucci as its chief negotiator. He met with representatives from Aboriginal communities, church groups, the federal government, and various law firms. Six months later, on November 23, 2005, an agreement in principle between the parties was reached.[illegible] The details of the settlement were finalized and approved by the federal cabinet on May 10, 2006.[illegible] As a result, the thousands of legal claims made against the federal government and the churches would be settled, although individual Survivors would be able to opt out of the settlement of their class action claims. The settlement followed the broad outline of what was recommended in 2004 in the AFN report. All Survivors would be eligible for a Common Experience Payment (CEP) based on verified attendance at one of the residential schools listed in the settlement. Claimants would receive a base payment of $10,000 for attendance, plus $3,000 for each additional year or part year of attendance.

In addition to the CEP based on attendance at a residential school, there was an Independent Assessment Process (IAP) available for those who suffered neglect, or serious sexual or physical assaults such as severe beatings, whipping, and [illegible] [illegible] beating at the schools. This process would include compensation for assaults by other students if there was a lack of reasonable supervision. The settlement contained a points system where points were assigned based on the type and frequency of assaults. The categories used were "serious dysfunction," "some dysfunction," "continued detrimental impact," "some detrimental impact," and "modest detrimental impact." Additional points could be awarded for difficulties in obtaining and sustaining employment and an inability to undertake or complete [illegible] education resulting in [illegible] unemployment or underemployment. Verbal abuse and racist acts, humiliation, and the witnessing of violence to others were also recognized as aggravating factors deserving of additional compensation points. The total number of points awarded to a claimant determined the amount of the claimant's award. The maximum IAP payment was $275,000, but up to an additional $250,000 could be awarded in more complex cases.

The settlement included an oral application form, and modifications were introduced in the settlement to take an inquisitorial, truth-seeking approach in which they could

[illegible]

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> parents and my parents. They're lost, they're gone. You can't recreate a loving way; all of that was lost. And that pain and suffering will continue well into the future.[illegible]

Survivor perspectives on the Independent Assessment Process

A number of Survivors have expressed concerns to the Commission that their IAP and other damage awards were considerably reduced by lawyers' fees. Joseph Martin Larocque attended the Beauval residential school. He told the Commission,

> I was mad at the government for what they did to us, so … I went through the court process. I went through the Department of Justice through the courts, and you know they, they gave me a little bit of money. They gave me a total of $55,000. What I didn't know was that the lawyer, the lawyer just to take my case got $15,000, and then he took another 12 from me, so he got about 27 and I got about 28, so, but, like, that's how it goes, yeah.[illegible]

Mabel Brown told the Commission her IAP payments amounted to about $25,000—an amount she observed was not enough for a house or even a vehicle and that the legal fees in the case amounted to $10,500. She recognized that the litigation process meant that Survivors had "a hard time, each one of them who went and had to make it public. That was so awful for them, I thought."[illegible]

Marie Brown attended Sturgeon Landing Indian residential school. She told the Commission about the inadequacy of attempts made in the IAP system to classify the degree of harm suffered by Survivors. She explained,

> There's no difference if you're psychologically abused it's the worst, worst thing ever a person can ever go through. Because my feelings, you know, about abuse, abuse, we were verbally abused … I was psychologically abused. I mean psychologically messed up in my mind … I felt like a reject, too, from everybody, even my family … And they, they can't tell me that sexually and physically abuse are more important than, than emotion. I, I don't believe that one bit, 'cause I went through it the same kind of a hurt that as they went through. There's no difference to me.[illegible]

Chief Theresa Hall, who attended residential school at Fort Albany, also expressed considerable anger at the categorization of sexual abuse used in her case and other cases of sexual abuse. She remarked,

> Sexual abuse to a degree, "two." That's bullshit. Sexual abuse is sexual abuse, you know. Touching when, when you're not wanted to be touched is an abuse of the child … If I were to find out that someone was, you know, doing that to

> my child, my grandchild, I'd go ballistic, you know. There's no way you could stop me, and that's the anger that, that I still have. They would have to put me in jail, you know, and that'd make headlines, a former justice of the peace goes in jail, [*laughs*] you know.[109]

The overriding concern that Survivors expressed was to question whether the system actually gave them the justice they were looking for. Amelia Thomas attended Sechelt residential school. She said,

> You can't get justice. How are you gonna get justice when the people that did this to us are gone? ... Like, they have us all apply for these statements and then our abuse ... Like, I've been waiting 5 years now for my appeal, and it hasn't happened yet. And it's almost time for them to stop giving the money out to us. And they opened up all our wounds for what? To turn us all down? And some people are dying.... So, so, why did they do this to us, again? They hurt us again. They shouldn't go back on their word to us. They already hurt us. Stop hurting us.[110]

Some Survivors had their IAP claims disallowed outright. Darlene Thomas told us that after a "two-part" IAP hearing, "one before Christmas and finished it in January," she was denied. Thomas explained,

> They said it, it could not be true ... I haven't even got a written document. The only thing that I got was I got an email from my lawyer saying they denied me, that they didn't believe me ... I went home and I gathered up all of my residential school documents and I went up to the mountain and I burned it. I said this is my story, this is what happened to me. And I don't give a shit who believes me or who doesn't.[111]

The overrepresentation of Aboriginal people in prison

Aboriginal people in this country are imprisoned at a rate far greater than non-Aboriginal Canadians. The reasons are complex, and understanding those reasons—and their relationship to the residential school experience—is essential to moving towards reconciliation.

For example, in 2011, Aboriginal people made up 4% of the Canadian population, yet they accounted for 28% of admissions to sentenced custody.[112] As recently as 2013, Aboriginal people constituted 23.2% of the federal inmate population. And since 2005–06, there has been a 43.5% increase in the Aboriginal population in federal prisons for those serving sentences of two years or more, as compared to a rise of 9.6% for non-Aboriginal inmates. One report indicates that from 2010 to 2013 the Prairie Region of the Correctional Service of Canada (primarily the provinces of Manitoba, Saskatchewan, and Alberta) accounted for 39.1% of all new federal inmates, and that

Aboriginal offenders comprised 46.4% of the Prairie Region inmate population. This included a majority of the prisoners at the Stony Mountain Institution in Manitoba (65.3% of inmates) and the Saskatchewan Penitentiary and the Edmonton Institution (63.9% of inmates).[136]

Of those admitted into provincial and territorial custody in 2011–12, Aboriginal females accounted for 43%, compared to 27% for Aboriginal males.[137] And in the same year, 49% of girls below the age of eighteen admitted to custody were Aboriginal, compared to 36% of males.[138]

When Aboriginal people are arrested and prosecuted, they are more likely to be sentenced to prison than non-Aboriginal people. In 2011–12, only 21% of those granted probation and conditional sentences were Aboriginal, yet Aboriginal people comprised 28% of those sentenced to prison.[139]

The situation for Aboriginal youth is even worse. In 1998–99, Aboriginal youth were 24% of sentenced admissions, but by 2011–12 they constituted 39% of sentenced admissions.[140]

Prison today is for many Aboriginal people what residential schools used to be: an isolating experience that removes Aboriginal people from their families and communities. They are violent places and often result in greater criminal involvement as some Aboriginal inmates, particularly younger ones, seek gang membership as a form of protection. Today's prisons may not institutionally disparage Aboriginal cultures and languages as aggressively as residential schools did, but racism in prisons is a significant issue. In addition, prisons can fail to provide cultural safety for Aboriginal inmates through neglect or marginalization. Many damaged people emerged from the residential schools; there is no reason to believe that the same is not true of today's prisons.

David Charleson, who attended the Christie school on Vancouver Island, explained that he has

> a record in jail so bad it's unreal, but it's all abuse charges, assault. I used to be happier when I went to jail. Talking to the guards, and they'd say, "You're back." And I'd say, "Yeah," said, "I'm in a safe place." I said, "It's more safe than the fuckin' residential school," pardon my language. "You know there's a lot of bad people here ... but you can't hit me.... I feel good in here." I said, "Yeah, I feel so good the government is so stupid putting us in here. They'll look after me more than the residential [school] did."[141]

Although jail may have been a safer place for David Charleson than residential school, it held terrors for Daniel Andre, who also attended residential school. He explained that after he left school

> everywhere I went ... everything I did, all the jobs I had, all the towns I lived in, all the people I met, always brought me back to, to being in residential school,

> and being humiliated, and beaten, and ridiculed, and told I was a piece of garbage, I was not good enough, I was, like, a dog.... So one of the scariest things for me being in jail is being humiliated in front of everybody, being made, laughed at, and which they do often, 'cause they're just, like, that's just the way they are. And a lot of them are, like, survival of the fittest. And, like, the, if they, if, if, if you show weakness, they'll, they'll just pick on you even more, and whatever, and then I'm gay, and, oh, fuck, it's just too many things, like, and it's almost like why am I here? ... and I had to ... I became a, a, a bad person, I became a asshole. But I survived, and learnt all those things to survive.[142]

Raymond Blake-Nukon's attended residential school, as did his parents. He explained to the Commission at the Yukon Correctional Centre that,

> this year I've been in jail for I think 21 years. This past Christmas was my 18th ... year in jail ... Every time I come to jail, it's for fighting ... I just wouldn't want any of my kids to go, like, even just see any violence that, like half the violence that I've been through, yeah. Yeah, I turned out to be a pretty violent guy. Up in the penitentiary, you know, did a few stabbings in there, and on the street. I'm surprised I never killed anybody yet. I don't want to kill anybody. So want to, want to get some help, and move on with my life.[143]

The reasons for overrepresentation

Although some Aboriginal people have been wrongfully convicted of crimes that they did not commit, most are in jail for having committed some offence. The available evidence suggests that these offences are likely to be violent and are likely to involve alcohol or other drugs. Over half of those who had been convicted had been convicted of assault or sexual offences or driving offences, 24.2% had been convicted of theft, 11.3% had been convicted of drug offences, 8.1% had been convicted of robbery, and 4.8% had been convicted of murder.[144] There are higher rates of crime on reserve than off reserve.

The Commission cannot ignore these facts, as uncomfortable as they may be. We also need to look beyond the statistics to hear from the Survivors about the reasons why they committed offences. We must understand the reasons why those affected by the intergenerational legacy of residential schools commit crimes if we are to reduce offences among Aboriginal people and the growing crisis of Aboriginal overrepresentation in prison.

Willy Carpenter was forced to attend the Roman Catholic school in Aklavik, NWT. He recalled,

> The RC Mission was the roughest place that I'd ever been in my life; the hostel, you know, that school. We'd get picked on, get into a lot of fights; I was very

> young but I learned how to fight. I had to protect myself. As I grew up, I kept that up. I got married, and without realizing what I was doing, I've been teaching my children what I know best; hardship, rough time ... I started serving time at a very young age; started going in jail. I was not even 17 years old when I went to jail. Lots of us; I met a lot of my school mates in jail ... All my boys are in jail; two of, two of my youngest ones, right now, are in jail; waiting for court. I blame myself for that ... The thing I do best, crime. I'm not proud of it. Now my boys are in there. I've been teaching them without realizing that I was teaching them; they learned it from me. It goes on and on; probably my kids will teach their kids the same thing I taught them; I don't know, who knows? Goes on and on and on; life goes on.[145]

Ruth Chapman attended a residential school in Manitoba where she was subject to physical abuse. She recalled that by fourteen years of age she had moved "to The Pas, went on the streets. I was, I was nominated for a leader for a gang. Yeah, by that time my heart was hard. This, this is when I got out of the residence." She recalled how the experience of violence made her violent:

> I've learned through that rape, I have, I've, I've learned to have power over men. Because when that guy, when that, when that situation occurred, he had a knife, and, and but somehow I got my strength, and, and I, I, I kneed his back foot, and he fell back, and I was gonna, then I somehow I managed to get that knife from him, and, and then I almost jammed it into his throat, but I stopped, something made me stop, and then he knocked the wind out of me.... I fought, and that's, that's, that's where I, I began to look at men as wimps, disrespected them. When I get mad at a male, I would cut him up. 'Cause if you punch someone, it only hurts, what, five minutes, but then you demean them with your words, 'cause that's what I learned, right, 'cause if you get someone mad in residence, man, you were cut to pieces.... And so I learned that. Even my husband, you know, he experienced some of the effects. I was charged a couple of years ago for beating him up ... I was always scared because of that anger. I knew I had the power with that anger. So, basically that, I would fight on the streets, too, with men in, in The Pas, I would, yeah.[146]

Many Canadians may fail to understand how the present crisis of Aboriginal overrepresentation in prison is related to residential schools when many of the remaining Survivors are over fifty years of age. The answer lies in the intergenerational effects of the residential school experience that are passed on through families and often through the child welfare systems. Diana Lariviere was hit with the strap in residential school, and she saw her daughter using the same harsh techniques; "she'll just say, 'Mom, that's how you taught us.'"[147]

While some social science research supports the connection between the residential schools and the commission of criminal offences, there is a need for more Canadian data that examines this connection. In the absence of such data, the Commission has examined examples of Aboriginal offenders. The picture that emerges through court documents is one in which Aboriginal overrepresentation in prison can be directly connected to problems experienced by Aboriginal people whose roots are deep in the intergenerational legacy of residential schools. The list of such problems reads like a social minefield. It includes, poverty, addiction, abuse, racism, family violence, mental health, child welfare involvement, loss of culture, and an absence of parenting skills. And one of the least well-understood but most insidious afflictions borne by the inheritors of the residential school legacy is fetal alcohol spectrum disorder (FASD).

Fetal alcohol spectrum disorder

According to the 2002–03 First Nations Regional Longitudinal Health Survey conducted by the First Nations Centre of the National Aboriginal Health Organization, Aboriginal adults have a higher rate of abstinence from alcohol than the general Canadian population. Rates of alcohol consumption also were lower. For example, in 2002–03 only 65.6% of First Nations people reported consuming alcohol, compared with 79.3% of the general population. Also in that year, rates of alcohol consumption were lower among First Nations females (61.7%) than among males (69.3%), and increased with age.[148] But for many Aboriginal people, alcohol consumption has devastating consequences.

Fetal alcohol spectrum disorder is a permanent brain injury caused when a mother's consumption of alcohol affects the fetus.[149] About 1% of Canadian children are born with some form of disability related to maternal alcohol consumption, but estimates suggest that 10% to 25% of Canadian prisoners have FASD. There is a growing consensus that people with FASD more frequently come into conflict with the law. A 2004 study that involved a sample of 415 patients diagnosed with FASD found that 60% of the adults sampled had come into contact with criminal justice systems as suspects or as charged accused.[150] A 2011 Canadian study found that offenders with FASD had much higher rates of criminal involvement than those without, including more youth and adult convictions.[151]

A study done for the Aboriginal Healing Foundation drew connections between the intergenerational trauma of residential schools, alcohol addictions, and FASD and concludes that the "residential school system contributed to the central risk factor involved, substance abuse, but also to factors shown to be linked to alcohol abuse, such as child and adult physical, emotional and sexual abuse, mental health problems and family dysfunction. The impact of residential schools can also be linked to risk factors for poor pregnancy outcomes among women who abuse alcohol, such as poor overall health, low levels of education and chronic poverty."[152]

The Aboriginal Corrections Unit of Corrections Canada has also sponsored research on FASD. A 2010 workshop concluded that,

> Although FASD has not been documented in the Aboriginal community to have a greater incidence rate than that of other peoples, the fact remains that alcohol abuse in Aboriginal communities is a serious issue. Furthermore, the children and youth population of Aboriginal peoples is growing at a rate that exceeds non-Aboriginal population of Canada. It is fair to make an assumption that increasing numbers of young Aboriginal people are at greater risk of being born with FASD. Without the necessary prevention and interventions, diagnosis and treatment, it is also safe to assume that the secondary characteristics of FASD will be pronounced, including involvement in the mainstream criminal justice system.[153]

The workshop report went on to observe that "currently the justice system is set up to fail FASD-affected individuals—poor memory functions results in missed court appearances resulting in fail to appear charges."[154]

One problem, especially with adult offenders, is the difficulty of obtaining an FASD diagnosis. Obtaining such a diagnosis requires a long and costly process of multidisciplinary referrals. Even if trial judges have been educated about the symptoms of FASD, they are generally unable to take notice of FASD without evidence of a diagnosis.[155] An expert panel, using a jury-style format and chaired by retired Supreme Court Justice Ian Binnie (known as the Binnie Jury) concluded in 2013 that "the individual with FASD is in a bind. No resources. No diagnosis. No evidence. No judicial notice. Therefore no fair and appropriate FASD–related accommodation is available within the usual rigours of the legal system."[156] The Binnie Jury recommended that exemptions be made available for offenders with FASD from mandatory sentences and restrictions on conditional sentences, an important subject to which we will return.[157]

Only a small minority of the judgments of criminal courts in Canada make clear connections between residential schools, FASD, and criminal offences. One particularly dramatic case involves C. L. K., a twelve-year-old Aboriginal girl in Manitoba who pleaded guilty to committing manslaughter as part of an unprovoked and severe fatal beating of a stranger who would not give cigarettes to her group. The judgment referred to a pre-sentencing report that indicated that the girl was one of seven children of parents who are "themselves victims, having suffered from their experience in foster homes and residential schools." The parents were described as incapable of parenting and this was clearly the case. The entire family had been involved with Child and Family Services since 1987 when the children were apprehended due to abandonment and parental alcohol abuse. The report described the family as in crisis:

> Of C. L. K.'s six siblings, four are known to Correctional Services and two have had gang involvement. C. L. K. herself has gang affiliations. As an example of the total absence of parental guidance the report refers to C. L. K.'s story about how she was first introduced to crack cocaine. She apparently bought the highly

> addictive drug from a friend of her brother's who came to the house selling it. When she didn't know how to use it her mother showed her how.[illegible]

C. L. K. was diagnosed with attention deficit hyperactive disorder (ADHD). The sentencing judge noted that "her exposure to drug and alcohol abuse, and her own drug abuse while still relatively young (particularly her use of Percocet, Restoril, and Valium), did little to help her when she was in school." When the girl was previously incarcerated at the Manitoba Youth Centre, "she was placed in the isolation cell 33 times and was involved in over 70 'incidents' which warranted documentation."[illegible]

In another case, *R. v. Jessie George*, an Aboriginal man received seven years for manslaughter for brutally assaulting and killing his Aboriginal friend in a dispute over a girl, after he had been drinking. Jessie George's pre-sentencing report was summarized thusly:

> Mr. George's mother was raised in residential school and foster homes and had a very difficult time. She became addicted to alcohol at a young age. Her addiction while pregnant with Mr. George affected his brain development. He has been diagnosed with alcohol related neurodevelopmental disorder which is within the class of fetal alcohol spectrum disorders. Mr. George's father is deceased … The offender's mother and his step-father separated when Mr. George was 5 years old and he bounced between both homes, always subject to the neglect and rejection born of alcoholism and drug dependency.[illegible]

George's subsequent life was also chaotic. His "attempts to return to school were defeated by his association with a gang that emphasized excessive drinking and drug use. He fathered a child when he was in his teens.… At 18, the offender moved back with his mother. He began selling and consuming street drugs as well as drinking heavily to escape his sadness … Life revolved around 'partying, getting drunk and going to jail.'"[illegible] The trial judge accepted that those with FASD "tend to be impulsive, uninhibited, and fearless. They often display poor judgment and are easily distracted.… FAS patients have difficulties linking events with their resulting consequences. These consequences include both the physical e.g. getting burned by a hot stove, and the punitive, e.g. being sent to jail for committing a crime. Because of this, it is difficult for these individuals to learn from their mistakes."[illegible] In delivering his seven-year sentence, the judge noted,

> Mr. George did not ask for the hand he was dealt even before his birth. He did not ask for a chaotic childhood. His mother did not ask for the hand she was dealt in her childhood. Her inability to parent compounded the prenatal effects of alcohol on Mr. George's brain. These are handicaps he will have to deal with for the rest of his life. I am sorry he has to deal with them. I hope he can overcome them. Nevertheless, the court must be concerned with the risk this young man presents to the public as a result of his impaired judgment and inability to control his impulsive behaviour.[illegible]

In *R. v. Charlie*, the accused was sentenced to six months and three years probation for armed robbery, failure to attend court, and breach of recognizance. In his reasons for sentencing, Judge Heino Lilles made an explicit connection between the residential schools and FASD as follows:

> Mr. Charlie is a status member of the Kaska Nation. He is from Ross River, Yukon, a remote village with a summer population of 450, of which 90 percent are of aboriginal descent. Mr. Charlie's parents were six years old when they were taken by the Indian Agents, along with other children in the community, to residential school. The parents of these children had little choice in the matter, as they were threatened with the loss of their rations if they did not cooperate. At the same time, they were offered $6 for each child that was taken to the residential school.[illegible]

Judge Lilles then observed,

> This history of Franklin Charlie's family is important because it identifies a direct link between the colonization of the Yukon and the government's residential school policies to the removal of children from their families into abusive environments for extended periods of time, the absence of parenting skills as a result of the residential school functioning as an inadequate parent, and their subsequent reliance on alcohol when returned to the communities. Franklin Charlie's FASD is the direct result of these policies of the Federal Government, as implemented by the local Federal Indian Agent. Ironically, it is the Federal Government who, today, is prosecuting Mr. Franklin Charlie for the offences he has committed as a victim of maternal alcohol consumption.[illegible]

These cases underline the link between residential schools, FASD, and offending behaviour that leads to involvement with the criminal justice system. Given the higher rate of Aboriginal involvement in the criminal justice system and the higher rates of incarceration, there is a need to take urgent measures both to prevent and better manage the harmful consequences of FASD for Aboriginal offenders.

33) We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

34) We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:

i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.

ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.

iii. Providing community, correctional and parole resources to maximize the ability of people with FASD to live in the community.

iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.]

Parental neglect

The connection between parenting skills and subsequent juvenile delinquency has been noted by Canadian courts. In finding an Aboriginal accused to be a dangerous offender, Justice J. E. Topolniski wrote, "For example, the negative attitudes displayed by Mr. Ominayak should be seen in light of his background as an Aboriginal man whose mother failed to learn parenting skills because her parents were products of the residential school system."[illegible]

In another case, an offender's father testified at his son's sentencing for sexual assault. He apologized to his son because "as a result of his own residential school experience, he did not know how to raise him properly."[illegible]

In *R. v. Jimmie*, the accused, a residential school Survivor, received two years plus a day for armed robbery. The Court of Appeal noted,

> Ms. Jimmie is a member of the Nemiah community which is situated in a very remote area of the Chilcotin. There are no counselling services on or near the community. Her life was described as being "full of trauma." She was raised in poverty by an alcoholic mother who often left her and her siblings alone to fend for themselves. Ms. Jimmie was sent to residential school where she was exposed to an atmosphere of violence. She has a sixth grade education. In [illegible], her sister's body was found in a river; she had been badly beaten. That crime has never been solved.
>
> About eight years ago, Ms. Jimmie's children were apprehended and placed in foster care. At the time of her sentencing, her spouse was hospitalized because of a mental breakdown.[illegible]

Family violence

Many studies have found that domestic violence and abuse are characteristics of dysfunctional homes that are passed along through the generations. One study based on [illegible] participants found that children who were exposed to domestic violence, or were themselves abused, or were exposed to both ([illegible]) had higher rates of committing felony assault in comparison to those who had no exposure.[illegible] Research has shown that when male children witness the abuse of their mothers in the home, it significantly increases their chances of becoming intimate abusers later in life not only of their partners but also of their children. An American study, whose sample of [illegible] persons included black, white, and Latino persons found that mistreatment experienced during adolescence also increased the probability of criminal behaviour. Percentages for late adolescent criminality were [illegible] for general offending, [illegible] for violent offending, [illegible] for drug use, and [illegible] for arrest. Although such studies are rare with respect to Aboriginal people in Canada, there is support for the connections between residential school, family violence, and subsequent offending in published cases.

In *R. v. [illegible]*, we see an example in which the accused was abused in residential schools and then in turn abused his own family. The sentencing judge observed: "[illegible]'s life is an example of the cost of the impact of residential schools, [illegible] life, and [illegible]. The abuse his father suffered at the residential school in [illegible], Manitoba, resulted in his own [illegible] and the perpetuation of a cycle of violence, addiction and is more product of a broken family."[illegible]

In *R. v. [illegible]*, the judge noted that "Gladue background factors are present. The accused as a youth suffered alcohol-related abuse by his step-father. The step-father himself had a history with residential schools which might provide some explanation for his abusive behaviour."[illegible]

The Commissioner's point is not to suggest that family violence and related problems are valid excuses for serious offences. They do, however, help to explain them. The intergenerational legacy of residential schools is an important background and contextual factor that helps explain Aboriginal overrepresentation in prisons.

Racism

The residential school environment was deeply racist. It presumed the intellectual inferiority of the children and it denounced Aboriginal culture, language, and parenting. The students were treated as if they were prisoners who required strict discipline simply because they were Aboriginal.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Loss of culture

[illegible]

[illegible]

[illegible]

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[illegible]

> [illegible]

> to him abusing alcohol, which in turn led to his extensive involvement with the criminal justice system between 1963 and 1986.[127]

In *R. v. M. L. W.*, in which the accused was given a two-year conditional sentence for driving under the influence, Dr. Peter Saunders, as an expert witness, connected the accused's residential school experiences to post-traumatic stress disorder, alcohol abuse, and subsequent criminal behaviour as follows:

> [M. L. W.] has been a patient of mine since May of 2008. Over the last three years I have seen him regularly on a professional basis and have come to have some understanding of the long term effect on his health that has resulted from the abuse that he sustained while attending residential school as a child. As a result of the post traumatic stress disorder that [M. L. W.] suffered as a young man, he experienced periods of drug and alcohol abuse.[128]

Many studies have confirmed that alcohol and drug abuse in the home environment significantly increase the chances of the cycle of substance passing on from generation to generation.[129] Judges cannot help but notice that substance abuse spans generations in Aboriginal communities.

There are cases where individuals have been both residential school Survivors and had been exposed to substance abuse in the home as a child. In one case, a judge who sentenced an Aboriginal person to four years for sexual assault noted,

> I have heard that he is a residential school survivor and I have heard that he was faced, while growing up, and surrounded by, a lot of dysfunction, and by many people who abused alcohol. There is very little doubt in my mind that Mr. G. has indeed faced systemic factors that have contributed to his difficulties with the law that probably contributed to his own unhealthy relationship with alcohol, which in turn has resulted in a fairly consistent pattern of breaking the law, going back to even before he was an adult.[130]

Intoxication by drugs or alcohol can, even in the most serious cases such as murder, be argued as a mitigating factor for criminal conduct. The courts, however, have taken a strict approach to such arguments. Even when intoxication is a factor, the accused will almost always be convicted of a less serious offence.

Mental health issues

It is widely accepted that the criminal justice system is not well-equipped to deal with mental health problems. Although mental illness is frequently present, it does not amount to a lawful defence to a charge unless it is of such intensity that it renders an accused incapable of knowing that which actions were wrong. Nonetheless, it can be and often is, a factor in offending behaviour. The role that residential schools have played in an accused's mental health is something that the courts have to take note of.

A study done by the Aboriginal Healing Foundation looked at 127 Aboriginal persons in British Columbia who had litigated residential school claims. Ninety-three of those case files had evidence of mental health problems. They included 21.1% for major depression, 20% for other disorders related to depression, 26.3% for substance abuse disorder, and 64.2% for post-traumatic stress disorder.[illegible] Sixty-two of those 127 case files had criminal histories, most for sexual offences, assault, and driving offences.[illegible]

One recent case indicated how a man accused of murder had been held in pretrial custody for four-and-a-half years. During that time he had been unable to obtain either mental health services or Aboriginal-specific programming. This man's father had attended residential school at Chesterfield Inlet. His mother had been taken away from her parents (who had also attended residential school) and adopted into a non-Aboriginal home. The offender had been diagnosed by a forensic psychiatrist as likely to be suffering post-traumatic stress disorder, personality disorder, and FASD. The judge observed that the offender "has been 'on hold' for the last four and a half years in an environment that cannot have done much for his spiritual or psychological health" and that when he was sent to an Ontario federal penitentiary he would be "caught in a Kafkaesque situation" because of the unavailability of any Aboriginal-specific program for his alcohol and violence problems.[illegible] The judge went on to say that the "unavailability of Aboriginal programming in federal institutions should not become simply the latest example of how Canadian society let [him] fall through the cracks."[illegible]

Poverty

Aboriginal people are more likely to live in poverty than non-Aboriginal Canadians, and when they do, the depth of their poverty is likely to be greater than that of other Canadians. They have an average income that is further below the poverty line on average than that of non-Aboriginal adults.[illegible] The impact of the 2008 recession was greater and persisted longer for Aboriginal workers than for the non-Aboriginal population.[illegible] Aboriginal people are more likely to experience unemployment and are more likely to collect employment insurance and social assistance.[illegible] When working, Aboriginal people have earnings well below their non-Aboriginal counterparts. The median income for Aboriginal peoples in 2010 was approximately 30% lower than the median income for non-Aboriginal workers ($20,701 vs. $30,195).[illegible] It is not surprising, then, that the child poverty rate for Aboriginal children is very high—40%—compared to 17% for all children in Canada.[illegible]

Many studies have shown a direct link between community poverty and higher crime rates.[illegible] This is apparently true even for the most serious of offences, including homicide.[201] Poverty and the lack of employment opportunities have also been found to be a pathway to gang membership.[202] Poverty also contributes to domestic violence. It leaves women living with violence with fewer resources to obtain independence from abusive partners.[203] A 2010 study found that residential school attendees were more likely to live in low-income households and to have experienced income insecurity. Aboriginal children who came from higher-income households were more likely to be successful in school than Aboriginal children from low-income households that were vulnerable to food insecurity.[204]

In *R. v. C. G .O.*, poverty was recognized as a strong contributing factor behind the accused being brought into court. The judge observed,

> Ms. C. O. grew up on a reserve near Regina ... Ms. C. O. has lived her life in poverty, isolation and violence. For the last ten years, if not longer, she has been disconnected from her family and traditions that are her sources of strength and support. She continues to live in poverty and violence. She is socially isolated with no one to call upon for help. Her home community still struggles with poverty, violence and offers few resources. Based on the evidence on sentencing, Ms. C. O. has had few realistic opportunities to change. In my view, the poverty, isolation and violence are precisely what brought Ms. C. O. to court.[205]

C. O. received a two years less a day conditional sentence plus three years probation for failure to provide the necessities of life and assaulting her three-and-half-year-old child.[206]

Child welfare involvement

A child's involvement in the child welfare system has been found to increase juvenile delinquency for children, in particular male children. One study of children who were maltreated in Chicago and its Cook County suburbs found that maltreated children who were placed into care had a delinquency rate of 16%, compared to 7% for children who were not placed into care.[207] Another study of children in California's system found that children who were placed at least once in a group home were 2.5 times more likely to become delinquent in comparison to children who were placed in a foster home.[208]

Frequent changes in placement (known as placement instability) has also been found to be significantly predictive for adult criminality. A study based on 772 persons with histories of abuse or neglect prior to age twelve found that the rates of adult arrest correlated with the degree of placement instability. The rates were 35% for no child welfare placements, 45.4% for one, 60% for two, and 76.3% for three or more.[209]

R. v. J. E. R. presents a vivid account of how placement in the system involving one generation led to further harm for those in the next generation:

> Mr. R. is the youngest of four children. He was born in Winnipeg. His parents separated just prior to his birth. Mr. R. understands that both were part of the residential school system. Mr. R. understands that his mother, V., was taken and sold as an orphan into the United States ... It is believed V. and her sister were placed in adoption in the United States at V.'s age five. They were physically abused in this adoptive home. The parents divorced, and V. and her sister were again placed in foster care and at V.'s age 12, adopted a second time and over the next one-and-a-half years were exposed to emotional and mental abuse. Thereafter, V. and her sister were separated and V. lived in several group homes ... in one she was sexually molested.
>
> V. returned to her biological mom at age 16 and gave birth to Mr. R.'s brother, J., at her age 17, and moved out at age 18. Mr. R. lived with his mother initially in Winnipeg. His mother and family then moved to Calgary and then on to Vancouver. The Calgary move was when he was an infant of seven months or so. The Vancouver move in August 1994 was when Mr. R. was about age two. The father prior to separation used drugs and alcohol and abused the mother V.[210]

The reasons for the overrepresentation of Aboriginal people in the correctional system are complex and interrelated. What is clear is that governments must commit to ending this imbalance. Better monitoring and evaluation of the situation is only the first step.

30) We call upon federal, provincial, and territorial governments, to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade and to issue detailed annual reports that monitor and evaluate progress in doing so.

Sentencing and sanctions

Over the past two decades significant advances have been made in the process of sentencing of Aboriginal offenders. However, these advances are under challenge from more recent amendments to the criminal law that expand the circumstances in which courts must impose mandatory minimum sentences.

Section 718.2(e)

In 1996, in recognition of the fact that Canada was imprisoning more people than many other democracies, Parliament overhauled the laws relating to sentences. One key change was the introduction of "conditional sentences," which allow offenders who might otherwise be imprisoned to serve their sentences in the community. But the centrepiece of sentencing reform was section 718.2(e) of the *Criminal Code*. It instructs judges that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders." Then Minister of Justice Allan Rock explained that

> the reason we referred specifically there to aboriginal persons is that they are sadly overrepresented in the prison populations of Canada. I think it was the Manitoba justice inquiry that found that although aboriginal persons make up only 12% of the population of Manitoba, they comprise over 50% of the prison inmates. Nationally aboriginal persons represent about 2% of Canada's population, but they represent 10.6% of persons in prison. Obviously there's a problem here. What we're trying to do, particularly having regard to the initiatives in the aboriginal communities to achieve community justice, is to encourage courts to look at alternatives where it's consistent with the protection of the public, alternatives to jail, and not simply resort to that easy answer in every case.[211]

The 1996 reforms represented a genuine and comprehensive attempt to recognize the need for restraint in the use of imprisonment and to provide trial judges with tools to provide realistic alternatives to imprisonment.

R. v. Gladue

R. v. Gladue (*Gladue*) was a landmark decision by the Supreme Court of Canada involving section 718.2(e) of the *Criminal Code*, in the case of an Aboriginal woman from British Columbia. On September 16, 1995, Jamie Tanis Gladue was celebrating her nineteenth birthday when she got into a violent disagreement with her boyfriend and stabbed him. She was eventually convicted of manslaughter. At her sentencing hearing, the judge took into account her youth, her status as a mother, and the absence of any serious criminal history. She was sentenced to three years imprisonment. When the Supreme Court dismissed her appeal of the sentence in 1999, the Court approvingly quoted a study to the effect that "the prison has become for many young native people the contemporary equivalent of what the Indian residential school represented for their parents."[212]

The Court noted that Aboriginal people constituted 12% of federal prisoners, and included the following statement in its ruling:

> The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system. The drastic overrepresentation of aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem. It is reasonable to assume that

> Parliament, in singling out aboriginal offenders for distinct sentencing treatment in s. 718.2(e), intended to attempt to redress this social problem to some degree. The provision may properly be seen as Parliament's direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it, to the extent that a remedy is possible through the sentencing process.[213]

The judgment continues: "The fact that the reference to aboriginal offenders is contained in section 718.2(e), in particular, dealing with restraint in the use of imprisonment, suggests that there is something different about aboriginal offenders which may specifically make imprisonment a less appropriate or less useful sanction."[214] *R. v. Gladue* is a much cited judgment and it has in some jurisdictions resulted in the introduction of more extensive pre-sentence or *Gladue* reports that provide the sentencing judge with contextual information on the background of Aboriginal offenders. Producing these reports has not been without difficulty and controversy. In 2012, the *Globe and Mail* reported,

> Saskatchewan, Alberta and Manitoba have barely begun to produce [*Gladue*] reports. While the number in Alberta has shot up from 14 in 2011 to 100 that are now in production, most of them are being prepared by probation officers—who are trained to assess risk factors but have no particular understanding of aboriginal culture and history. In Quebec, *Gladue* reports are almost unheard of.[215]

Many jurisdictions work with Aboriginal community groups to prepare *Gladue* reports. This is a good practice because probation officers who prepare pre-sentence reports generally do not have cultural training to work with Aboriginal offenders, families, and communities to prepare adequate *Gladue* reports prior to sentencing.

There are some concerns that defence lawyers may not always request a *Gladue* report or use it to their clients' advantage. One defence lawyer noted, "The lawyer is not compensated for the report and yet we are expected to do multiple hours of work that we are not paid for. Sometimes we are asked to review the report. That can take 3 hours. More time is spent on the *Gladue* report than other PSRs [Pre-Sentence Reports] because of the structure of the program."[216]

Gladue reports can often be difficult for offenders and their families. One *Gladue* report writer stated, "The interviews are very hard. They are very emotional. Especially if a person is in custody. I've had guys say, 'I can't talk about that because I can't cry in here.' Sometimes I wonder if we are re-traumatizing them."[217]

However, some judges see that they have a greater responsibility. In *R. v. Jesse Armitage*, which was heard in the first official Canadian court established to adhere to the principles expressed in *R. v. Gladue* and accordingly called a "*Gladue* court," Justice Nakatsuru wrote his entire judgment in unusually simple prose:

> In the *Gladue* court at Old City Hall, accused persons who share a proud history of the first people who lived in this nation, not only have a right to be heard, but

> they also have a right to fully understand. Their voices are heard by the judges. And they must also know that we have heard them ... I know that all accused, whether they have any Aboriginal blood or not, should have this right. Judges struggle to make sure they do. However, when judges write their decisions, they are writing for different readers, different audiences. Judges write not only for the parties before them. Judges write to other readers of the law. Lawyers. Other judges. The community. In this case, I am writing for Jesse Armitage.[218]

In his ruling, Justice Nakatsuru noted that Jesse Armitage's grandmother was a residential school Survivor, and that her own children have struggled with alcoholism; and that Armitage came from a broken home. The judge went on to say,

> If I could describe Mr. Armitage as a tree, his roots remain hidden beneath the ground. I can see what he is now. I can see the trunk. I can see the leaves. But much of what he is and what has brought him before me, I cannot see. They are still buried. But I am sure that some of those roots involve his Aboriginal heritage and ancestry. They help define who he is. They have been a factor in his offending. They must be taken into account in his sentencing.[219]

R. v. Ipeelee

The case *R. v. Ipeelee* (*Ipeelee*) involved two men—one from Yukon, the other from Nunavut, both with serious alcohol problems going back to their youth, both with long criminal records, both from broken families, and both with links to residential schools. The argument that reached the Supreme Court of Canada concerned the breach of their long-term supervision order. In its 2012 ruling, the Court reduced the sentence of one man and affirmed the other. What will be remembered from this ruling was the Supreme Court's decision to revisit and reaffirm *Gladue*. The justices noted that the problem of Aboriginal overrepresentation had gotten worse in the thirteen years since *Gladue* was decided. The Court pointed out that while Aboriginal people comprised 12% of federal inmates in 1999 when *Gladue* was decided, they constituted 17% of federal admissions in 2005. The Court then noted that

> courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.[220]

The Supreme Court pointed out that some lower court judges had erred in their application of *Gladue* by concluding that it did not apply to serious offences or that it required an offender to demonstrate a causal connection between the commission of the crime and the legacy of residential schools or other background or contextual factors. *Gladue* mandates trial judges to consider all the background factors for Aboriginal offenders. This was clear direction from the Supreme Court's ruling that offenders need not demonstrate a direct causal relationship between the legacy of residential schools and the commission of offences.[illegible]

Section 718.1 of the *Criminal Code* codifies a long-standing principle of criminal justice that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender." The Court in *Ipeelee* indicated that the fundamental questions of proportionality must be addressed in a different light given the reality of how Aboriginal people have been treated in Canada. The Court invited judges to revise their understanding of traditional sentencing principles, including deterrence and denunciation in light of evidence of their failure to achieve their objectives and "to meet the needs of Aboriginal offenders and communities."[illegible]

The *Gladue* factors require consideration of restorative principles of sentencing, including acknowledgment of harm done to victims and communities and rehabilitation of offenders in contrast to punitive principles of sentencing.

The Supreme Court's landmark decisions in *Gladue* and *Ipeelee* remind trial judges to take a different approach in applying the purposes and principles of sentencing to Aboriginal offenders, including those related to deterrence, denunciation, and retribution. These decisions recognize that the application of a uniform one-size-fits-all approach to punishment will be discriminatory and ineffective given the treatment of Aboriginal people in Canadian society, including the intergenerational legacy of residential schools. However, there is a pressing need for sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and will respond to the underlying causes of offending by them. Without adequate and stable funding of community sanctions and evaluation of their success, it is likely that the overrepresentation of Aboriginal people in prison and among crime victims will continue to grow.

Gladue, *Ipeelee*, and Aboriginal young offenders

Aboriginal youth experience the justice system in very different and more disruptive ways than other youth. They are more likely to be detained in facilities that are far from their homes, families, and communities. Having court processes hundreds of kilometres away makes it more difficult for them to have someone in court to support them or suggest alternatives to incarceration.

In an analysis of Ontario data from 2004–05 and 2005–06, Aboriginal youth were underrepresented amongst those who received non-custodial sentences available under the *Youth Criminal Justice Act* and overrepresented in more serious sentences.[illegible] The explanation does not lie in any differences in the types of crimes that

Aboriginal youth are charged with. In fact, Aboriginal youth receive custodial sentences at a greater rate than non-Aboriginal youth for the same offences.[illegible]

Sentencing decisions are one of the most obvious points in the system for reform. Courts often consider factors that may seem neutral on their face but are not. For example, a person with a good job, a good education, and wealth is likely to receive a sentence that is less disruptive to his or her lifestyle. On the other hand, as Professor Tim Quigley has observed, "the unemployed, transients, the poorly educated are all better candidates for imprisonment. When the social, political and economic aspects of our society place Aboriginal people disproportionately within the ranks of the latter, our society literally sentences more of them to jail. This is systemic discrimination."[illegible]

Community sanctions

The Commission has heard testimony from Survivors about how community sanctions can work to the benefit of both offenders and the community. Gerald McLeod explained to the Commission how he developed an addiction to alcohol as a coping mechanism after being sexual abused in two residential schools in Yukon. He recalled,

> I was 16, I started getting impaireds. I ended up with 18 impaireds, 'cause of my drinking and alcoholism, and I'm not proud of it. I'm, I'm happy that I didn't kill my, nobody, or I killed myself, or one of my family members. I was blessed that way that I didn't hurt no one.

McLeod faced a ten-year jail sentence when convicted for the eighteenth time, but Justice Barry Stuart, a pioneer in community sanctions and circle sentencing, gave him an opportunity to stay out of jail. McLeod recounted,

> [I] got to treatment in Calgary, Stoney Medicine Lodge, and I sobered up for two years, and I came home to the Yukon here. The judge put me through circle court. I was the first one to go through circle court here in the community. I got cleared of this charge for two years, and blood tests for two years. So, I did that for two years, proved to them I can stay sober… and two of us did that, went to treatment, Dennis Jackson and I, and we've been sober for 19 years now. And you know when we came out of our sweat in Calgary, there was two eagles flying around, and I told Dennis that that's us up there, and then I said right on.[illegible]

The use of community sanctions to deal with deep traumas caused by residential schools is not a panacea, and there may be failures on the road to recovery. Gerald McLeod explained to us that despite his successful battle against alcoholism, he has been convicted and imprisoned twice for sexual assaults. He explained, "I'm marked by the government, to sign a paper saying, 'I am a sexual assault offender for the rest of my life.' … And you know I'm marked for the rest of my life for something that I was taught as a kid, or forced on as a kid, then I go do it, and I'm marked for life for doing it." McLeod admitted his offences and said, "I'm not trying to make excuses or anything, but I, I can't answer it yet. I can't, you know, what was passed on to me, then am I passing it on to others? Or, you know, the only way I can answer that is go through treatment, and that's what I'm working right now is treatment through my connections, and I'm looking at residential treatment in the future."

Such treatment can be more difficult for offenders like Gerald McLeod who have served a lot of time in prison. He explained,

> It's a lot of work, and it's, it's not easy to keep opening up this can of beans to, or can of worms to spread it out.... It was all there from my childhood I was dig growing up, fighting all my life, and then now they want me to dig it all out again, and then start over again with all this misery that I have to live with, that I've lived with, but I know it's the only answer for me is to get it out of me, and start working on a new life.... It's a lot of stuff there that you have to work on the, your spirituality, your language, your, everything that you lost, you know, you're trying to get it back so you can be an Indian with yourself again a little bit. But you got so many hurdles out to overcome from the residential [school] that you're faced every day in your community, everything that you live with in your community that is, that is not right, 'cause it's a stem off from residential that we do suffer in our communities with today from our children, and from our grandchildren.

All of that causes us to conclude that, for Aboriginal people, many, if not most, offences committed by them result in sentences of incarceration that fail to address the underlying causes of offending behaviour in a manner that supports their mental, spiritual, and cultural needs or reduces crime. The promise of the Criminal Code amendments of 1996 and the Supreme Court's decisions in Gladue and Ipeelee have not yet been met. More needs to be done.

> **31) We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.**

Barriers to reducing Aboriginal overrepresentation in prison

Bill C-10 and mandatory minimum sentences

In 2012, Parliament enacted Bill C-10. This legislation includes more mandatory minimum sentences and restrictions on conditional sentences. In announcing the Royal Assent of the Bill, several federal parliamentarians declared, "Our Government is committed to ensuring that criminals are held fully accountable for their actions and that the safety and security of law abiding Canadians comes first in Canada's justice system. We will continue to fight crime and protect Canadians so our communities are safe places for people to live, raise their families and do business.[illegible]

Mandatory minimum sentences are sentences that, if properly enacted, no judge can reduce or modify. For example, Bill C-10 introduced longer mandatory minimum sentences for several sexual offences against children, ranging from a ninety day minimum when the Crown prosecutor proceeds by summary conviction, and a one-year minimum when the Crown prosecutor proceeds by indictment.[illegible] Bill C-10 also affected the mandatory minimum for various drug offences, like trafficking, exporting, and possession with intent to either traffic or export. The mandatory minimums for these offences range from one to two years depending on the nature and amount of the substance, and certain aggravating factors of which the court is obliged to consider.[illegible] Similarly, Bill C-10 introduced a mandatory minimum sentence of two years for the production of certain substances, or a three year mandatory minimum where certain health and safety factors are present.[illegible]

Since the enactment of Bill C-10, certain offences are also no longer eligible for a conditional sentence—a term of imprisonment to be served in the community as opposed to in a correctional facility. These include any offence that has a maximum sentence of fourteen years or life (e.g., manslaughter, aggravated assault), as well as certain offences punishable by ten years or more where the provincial Crown chooses to proceed by indictment.[illegible]

The legislative emphasis on whether or not a charge proceeds by way of indictment places particular importance on the role of provincial Crown prosecutors in pursuing such charge. Prosecutorial discretion, being unreviewable by the courts, can have a dramatic impact on the considerations available to the judiciary and possible opportunities for rehabilitation-centred sentencing. In addition, no conditional sentence is available if there is any mandatory minimum term of imprisonment even for sentences as short as thirty to ninety days.[illegible] The restricted sentencing options challenge courts to find appropriate sentencing, and impact the health and healing of Aboriginal people, their communities, and their families.

Joanne Mary Cassidy explained to the Commission that she became addicted to alcohol and other drugs at an early age in part because of "learned behaviour" from her mother who attended residential schools. "It's only 'till last year that I quit drinking, that the only reason I quit drinking is 'cause I was forced into it by the courts. But I feel so much better than I did and I know my kids are, I know that they're doing better because I'm, I'm not drinking."[illegible] She explained that the judge was able to give her a two-year "house arrest" sentence. The Crown prosecutor had initially asked that she be incarcerated for seven years, but the conditional sentence allowed her to continue her relationship with her children, attend Aboriginal ceremonies, and "to deal, deal" and realize the intergenerational effects of residential schools on her and her children.

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[illegible]

Security classifications

Another barrier to accessing needed programming is that Aboriginal offenders are placed in stricter security classifications in disproportionate numbers in comparison to non-Aboriginal offenders.

Initial determination of security classification upon arrival in a federal penitentiary is mandated under to the *Corrections and Conditional Release Act*, and is made using the Custody Rating Scale.[illegible] Under this scale, a score of 133.5 or higher on the security risk component qualifies an inmate for maximum security.[illegible] The factors to be considered in assigning a security classification are:

a. the seriousness of the offence committed by the offender;
b. any outstanding charges against the offender;
c. the offender's performance and behaviour while under sentence;
d. the offender's social, criminal and, where available, young offender history;
e. any physical or mental illness or disorder suffered by the offender;
f. the offender's potential for violent behaviour; and
g. the offender's continued involvement in criminal activities.[illegible]

The offender's prior criminal history is an important factor in the security assessment that operates to the detriment of many Aboriginal inmates.[illegible]

In 1990, the Task Force of Federally Sentenced Women found that Aboriginal women were much more likely to receive higher security classifications than non-Aboriginal women.[illegible] The Native Women's Association of Canada estimated that, as of 2003, Aboriginal women comprised at least 50% of incarcerated federal women classified as maximum security.[illegible] A study done in 2000 found that Aboriginal inmates were classified as maximum security or medium security at rates of 27.7% and 34.7%, respectively, in comparison to rates of 20.3% and 24.1% for non-Aboriginal offenders.[illegible]

The Canadian Human Rights Commission describes the effects of a maximum security classification on female inmates as follows:

> Maximum security inmates, unlike their minimum and medium security counterparts, are not eligible to participate in work release programs, community release programs or other supportive programming designed to enhance their chances of reintegration. In fact, half of all maximum security women are now being released directly from maximum security incarceration into the community after serving two thirds of their sentence, without the benefit of preparatory programming.[illegible]

This is clearly detrimental to the inmate's prospects of reintegration in the community. The inmates are released without having had adequate correctional programming, as well as with a lack of resources and supports to facilitate rehabilitation.[illegible]

Studies have shown that Aboriginal inmates in the aggregate have criminal histories that are considered by authorities as worse than those of non-Aboriginal inmates.[illegible] One study for example shows that in 2003 at least 80% of Aboriginal federal inmates had previously served terms in provincial jails in comparison to approximately 70% for non-Aboriginal inmates.[illegible] Inuit and First Nations federal inmates were more likely to have served a previous adult community supervision sentence, at rates of 87% and 79%, respectively, in comparison to 72% for non-Aboriginal inmates.[illegible] Aboriginal inmates are more likely to have been convicted of serious crimes than non-Aboriginal offenders. First Nations and Métis offenders also have had greater involvement with the youth justice system.

The Correctional Service of Canada's Commissioner's Directive on Security Classification makes little reference to the unique experiences and needs of Aboriginal offenders, apart from a requirement to consider "Aboriginal social history."[illegible] It is a fair question to ask whether this part of the directive results or will result in any tangible benefits for Aboriginal inmates while static factors involving prior history remain a substantial component of security classification determinations. Aboriginal offenders continue to be placed more often in higher security classifications. Previous criminal history, youth history included, will represent enduring penalties for Aboriginal offenders, even during reclassification determinations. Therefore, the security classification scheme as applied to Aboriginal inmates may represent a form of systemic discrimination.

There are alternatives that may indeed be workable. The Security Reclassification Scale for Women was developed as a gender-specific method of security classification for female offenders. The nine items that are considered in this scale are as follows:

1. Correctional plan; program motivation.
2. Maintains regular positive family contact.
3. Number of convictions for serious disciplinary offences during the review period.
4. Number of recorded incidents during the review period.
5. History of escape or unlawfully at large from work release, temporary absence or community supervision.
6. Pay level during the review period.
7. Number of times the offender was placed in involuntary segregation for being a danger to others or the institution during the review period.
8. Total number of escorted temporary absences (ETAs) during the review period.
9. Custody Rating Scale incident history.[illegible]

What is noteworthy is the de-emphasis on static factors involving the offence, or previous criminal history, and a greater emphasis on progress and behaviour during the review period. Early field tests involving 580 files have found that the scale is reliably predictive of actual security risk.[253] Given that there is evidence that Aboriginal spiritual healing can improve offender behaviour, and improve prison conditions generally, there is no reason other than bureaucratic inertia why the Canadian correctional system could not develop an Aboriginal-specific classification scale.

Culturally relevant prison programming

Studies based on interviews with Aboriginal inmates have confirmed that participation in Aboriginal cultural programs in prison can contribute to the healing of the inmates through increased self-esteem and positive changes in lifestyle that make release and reintegration a real possibility.[254]

Joanne Nimik's birth mother was a residential school Survivor. Nimik was adopted into a white family. She recounted,

> [I got] into the bad crowd and started partying and drinking and drugging and, I ended up having three girls that were also apprehended through CFS [Child and Family Services] ... And it wasn't until I was 28 years old that I was reunited with my birth family. Apparently my mother Rowena had been looking for me all those years that I was adopted out and we had the reunion and it was, it was really nice 'cause, you know I always wondered who my family, like my real family was, my birth family. And, there was that missing piece in my life that I'd been searching for and didn't know how to make up for it. So I was using drugs and alcohol as a coping mechanism I guess. I've had a very hard life I guess; involved with the justice system, CFS system, drugs and alcohol, the legal system. And, because of my lack of knowledge of support systems or how to ask for help, I stayed in that way of life for quite awhile. I didn't identify myself as First Nation or Aboriginal or didn't have no clue about what it meant to be Anishina-abekwe or anything.[255]

Joanne Nimik's healing journey away from crime and drug abuse started at an Aboriginal centre for addiction treatment as part of a sentence she was serving. She recounted,

> I went to treatment at Poundmakers in Alberta and that was actually the first time I've been exposed to a sweat lodge. I signed up for it, but I was too scared to go in. First time exposure to what an Elder was, to smudging, sharing circle, sweetgrass. So it, it was a real eye opener, it scared me but I was still curious to a degree ... I had, been arrested and I guess in that being arrested that was the

> turning point in my life where I was able to take advantage of a program to get some help.[266]

Since she started her healing journey away from crime, Nimik has been able to help others who like her were at risk of being victimized by crime and committing crimes.

Chris Gargan spoke to the Commission from The Yellowknife Correctional Centre in the NWT. He was looking for Aboriginal guidance and not getting it:

> Right now I'm doing a program. There's a white, white woman that's treating that program, and they, and they put, they push it on us ... like, I wish it was somebody like Healing Drum Society program, or something like that.... They're teaching us about anger, anger. It would be nice if our own people would come in here and teach us about life ... you know, how to live. This is not the way of life for us. It's not the way for us people.[267]

The regimented and often violent life of prison has striking resemblances to life in residential schools. Judge Heino Lilles served on the Yukon Territorial Court.

> Jail has shown not to be effective for First Nation people. Every family in Kwanlin Dun [Yukon] has members who have gone to jail. *It carries no stigma and therefore is not a deterrent. Nor is it a "safe place" which encourages disclosure, openness, or healing.* The power or authority structures within the jail operate against "openness." An elder noted: "jail doesn't help anyone. A lot of our people could have been healed a long time ago if it weren't for jail. Jail hurts them more and then they come out really bitter. In jail, all they learn is 'hurt and bitter.' (emphasis added)[268]

The Ma Mawi Wi Chi Itata program, based in the Stoney Mountain Institution in Manitoba, is a program designed for Aboriginal inmates who have been convicted of domestic violence offences. It approaches the problem through a combination of healing and spiritual ceremonies, and educational components that are designed to help inmates understand and control their violence and develop healthier relationships and parenting skills.[269] During a review of the program after its first-year pilot, many of the Aboriginal inmates who were interviewed by researchers indicated that the program was a positive experience since it provided their first exposure to their traditional cultures and helped them understand and control their violence. Correctional staff also noted positive changes, including reduced aggression in the inmates and improved relationships between staff and inmates.[270]

A study has shown that the recidivism rate for Aboriginal offenders who participated in cultural activities was 3.6% compared to 32.5% for those who did not.[271] The recidivism rate was 14.4% for those who participated in spiritual activities (for example, a sweat lodge ceremony) compared to 24.2% for those who did not.[272] The recidivism rate was 12.9% for those inmates who had contacts or meetings with an Aboriginal Elder compared to 26.8% for those who did not.[273] Authors of another survey interviewed fifty-six male and twelve female Aboriginal ex-offenders who had stayed out of trouble with the law for at least two years following their release. While other factors such as family support and steady employment were important in keeping them out of trouble, a large percentage of the respondents indicated that participation in spiritual ceremonies (71%) and cultural activities (68%) were also important in helping them avoid conflict with the law.[274]

Unfortunately, such culturally appropriate programming is not always available in Canada's prisons. In 2008, Correctional Investigator of Canada Howard Sapers indicated before the Senate Standing Committee on Legal and Constitutional Affairs that the Correctional Service of Canada had an annual budget of $1.8 billion, and yet allocated only $27 million of that for the delivery of core program services. He went on to suggest that, given these figures, it was hardly surprising that many Aboriginal inmates had no access to culturally specific programs that could help them progress towards release.[275]

Culturally relevant programming has to accommodate the diverse spiritual needs and practices of Aboriginal inmates. The Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform recommended that both provincial and federal correctional authorities should ensure "that access to cultural and spiritual programming, whether traditional or religious, be made more available" to Aboriginal offenders.[276] The wisdom of this recommendation is affirmed by what the Commission has heard from Survivors about the value that traditional and other religious practices have had in their healing.

36) We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

Aboriginal healing lodges

There are four Aboriginal healing lodges run by the Correctional Service of Canada (CSC) and four run by Aboriginal communities under section 81 of the *Correctional Services Act*. According to the Correctional Service of Canada, its lodges "provide living environments that use Aboriginal traditional healing approaches as a method of intervention. Both are rooted in the spiritual and cultural activities led by Elders, and supported by dynamic contact with the community through CSC's temporary absence program and pro-social interactions with staff members and management, many of whom are Aboriginal."[277]

A 2011 report by CSC documented positive findings about Aboriginal healing lodges, including that healing lodge residents, staff members, and management interviewed during the evaluation noted improvements in offenders' attitudes and behaviours, as well as their greater understanding of, and connection to, Aboriginal culture. For example, offenders showed improvements in the areas of self-confidence, personal responsibility, motivation, and self-discipline. They demonstrated deeper understanding of their lives and criminal behaviours, greater respect, and positive attitudes towards others, and recognized the importance of seeking help and establishing support networks.[278]

Despite these positive findings, the most pressing concern about Aboriginal healing lodges is the lack of resources. At the basic level, section 81 lodges are in need of physical improvements. Furthermore, the lack of funding has affected recruitment, training, and retention of lodge staff. Recruitment is especially difficult as Aboriginal people with the required skill sets are in high demand and the lodges cannot afford to pay what the market dictates. In terms of training, most section 81 lodges do not have the funds to adequately train their staff regarding CSC procedures. Programming is another area that has been affected by lack of funds. Smaller facilities do not offer structured programs, as they do not have the resources to offer programs given the small number of residents who need them.[279]

Given the positive role that healing lodges can have for those Aboriginal offenders who must serve a period of incarceration, and the proven failure of existing correctional programs not specifically aimed at supporting Aboriginal inmates, it makes considerable sense to provide more resources to healing lodges.

35) We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.

Reintegration of Aboriginal offenders

An important factor that is considered by the National Parole Board in whether to grant or deny parole is an actuarial risk assessment of whether the offender is likely to reoffend. According to one study, the percentages of inmates who were assessed as a high-risk to reoffend were 85% for Inuit, 73% for First Nations, 67% for Métis, and 57% for non-Aboriginal inmates.[280] One problem here, as with initial security classification, is a tendency to give great weight to the static factor of criminal history. This means that Aboriginal offenders often come to the parole board with two strikes against them and there is nothing they can do to overcome their prior convictions. Some research has concluded that criminal history is a reliable risk predictor for both Aboriginal and non-Aboriginal inmates.[281] At the same time, however, prior convictions of Aboriginal offenders are frequently a response to oppressive social conditions, including the intergenerational legacy of residential school. Viewed in this light, reliance on criminal history in the parole context, as in the security context, may be a form of systemic discrimination that disadvantages Aboriginal offenders. As in the security classification context, there are strong arguments that more emphasis should be given to dynamic factors such as substance abuse that the Aboriginal offender can, to some extent, control. The John Howard Society says of dynamic factors,

> Dynamic factors have been found to predict recidivism as well as, or better than, static factors, and are also measured by several actuarial risk assessment tools. It is knowledge of dynamic factors that is necessary in order to assess changes in an offender's risk level. Through participation in rehabilitative programming, an offender may become less likely to recidivate, but corrections and parole workers would not be able to measure this change unless they assessed the offender's risk based on changeable factors.[282]

Actuarial risk assessment of Aboriginal offenders that de-emphasize static factors, and instead focus on participation in appropriate programming, including cultural and spiritual healing programming for Aboriginal inmates, along with attendant offender progress in addressing dynamic risk factors, would be just as useful and fairer to Aboriginal inmates. It would also encourage Aboriginal inmates to engage in such programs, once they know that participation would have more significant weight. Such programming and spiritual healing can affect Aboriginal inmates' behaviours so they can prepare themselves for parole and reintegration. Such an approach, however, will only achieve greater fairness for Aboriginal offenders to the extent that Aboriginal programming is made available to them.

When the National Parole Board grants parole, the delivery of correctional programming continues. The early stages of parole are often spent in a residential correctional facility—a halfway house. A halfway house, while not a prison, requires the offender to reside there and not be absent save under specific exceptions (e.g., supervised absences or employment). It is meant as a transitory phase in an offender's parole, neither full incarceration nor full freedom in the community, with the goal of gradual reintegration into the community.

There are a number of halfway houses designed specifically to provide culturally sensitive services for the reintegration of Aboriginal offenders. These include but are not limited to the Stan Daniels Centre in Edmonton, Waseskun House outside of Montréal,[283] and the Kwìkwèxwelhp Healing Village run by the Chehalis First Nation in British Columbia. The Beardy's and Okemasis First Nation in Saskatchewan began operation of a forty-bed minimum security institution called the Willow Cree Healing Lodge in 2003. In addition to core programs that address educational and life skills, the facility also provides healing circles and programs designed to raise cultural and spiritual awareness.[284]

Unfortunately, there are too few halfway houses that provide programming specifically for Aboriginal offenders. A study by Jason Brown found that Aboriginal parolees often faced a lack of adequate housing, or racial discrimination from prospective landlords. They were therefore vulnerable to residential instability, which increased their risk of reoffending. The study stressed the needs for increased community supports so that Aboriginal parolees can find adequate housing.[illegible] The Commission concludes that more supports are needed to address such issues.

37) We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.

Overrepresentation of Aboriginal youth in prison

Young offenders are defined as those young people who are at least twelve years of age but less than eighteen at the time of sentencing. Of the youth admitted to custody in Canada in 2011–12, 49% of young women admitted were Aboriginal, as were 36% of the young men admitted. As troubling as these statistics are, they probably understate the case, because they exclude Nova Scotia, Québec, Saskatchewan, and Nunavut, for which data was not available for the period covered.[illegible] Aboriginal youth accounted for only 7% of the young people aged twelve to seventeen.

Young people who commit crimes have historically been treated differently than adults. The justice system recognizes that young persons have a heightened vulnerability, less maturity, and a reduced capacity for moral judgment, standing as they do at the borderline between childhood and maturity. Canada's youth justice system has operated on the presumption that young people have a reduced degree of moral blameworthiness such that the use of incarceration should be restricted.[illegible]

This recognition is not only a long-standing characteristic of Canada's domestic law, but is also required by Canada's international legal commitments.[illegible] The *United Nations Convention on the Rights of the Child* states that children have the right to a criminal justice system that "takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."[illegible]

Currently, the procedures for addressing young people accused of crimes are set out in the *Youth Criminal Justice Act* (*YCJA*), which was introduced in 2002. One of the key objectives of the *YCJA* is to reserve jail for the most violent or habitual offenders. Even in such cases, one of the express goals of the youth criminal justice system is to address the circumstances underlying a young person's offending behaviour in order to rehabilitate and reintegrate young people back into society.[illegible] The *YCJA* recognizes that most youth come into contact with the law as a result of fairly minor and isolated incidents, or by impulsive behaviour that should not stigmatize them with a criminal record in the same way as with an adult offender. There are a number of tools to resolve youth cases in informal ways, such as "extrajudicial measures" (e.g., warnings, cautions, mediation, and family conferencing.) This emphasis on reintegration and restorative justice has much in common with Aboriginal perspectives on justice, and gives reason to hope that Aboriginal youth can expect more appropriate treatment when they come into contact with the law.

In addition, the *YCJA* requires youth courts to consider all available sanctions other than custody that are reasonable "with particular attention to the circumstances of aboriginal young persons."[illegible] The *YCJA* also requires that any "measures taken against young persons who commit offences should ... respond to the needs of aboriginal young persons."[illegible] There is nothing comparable to such a provision in the *Criminal Code of Canada* applicable to adults. In theory, this should allow Aboriginal youth to maintain access to their traditional practices and to be dealt with by the justice system in accordance with Aboriginal culture.[illegible]

By many objective measures, the *Youth Criminal Justice Act* has been a success. Prior to the *YCJA*, Aboriginal youth had a better chance of going to jail than of graduating from high school.[illegible] But while there has been a steady decline in youth crime, youth court caseloads, youth supervised on a community sentence and in custody in Canada since the legislation came into effect,[illegible] the rate of Aboriginal youth incarceration remains high.[illegible]

Many of today's Aboriginal children and youth are living with the legacy of residential schools, as they struggle to deal with high rates of addiction, fetal alcohol spectrum disorder, mental health issues, family violence, the incarceration of parents, and the intrusion of child welfare authorities. All of these factors place them at greater risk of involvement with crime. In addition, the overincarceration of Aboriginal adults (also tied to the residential schools) has repercussions for their children. One study in British Columbia found that 39% of youth in custody have a parent with a criminal record and 47% have another family member with a criminal record.[illegible]

Aboriginal youth crime and the child welfare system

The young person standing before a judge represents the end point of a history of colonization and marginalization that is breathtaking in its scope. The criminal justice system accomplishes little more than increasing that marginalization.

The growing overrepresentation of Aboriginal youth in custody mirrors the even more dramatic overrepresentation of Aboriginal children in child welfare care. The child welfare system plays an important role in Aboriginal youth crime. Not only do children and youth in care have poorer outcomes in education, health, and well-being than the general population,[illegible] some child welfare facilities are also prime recruiting grounds for Aboriginal gangs, with a large proportion of gang members reporting that they became involved with gangs after placement in either a child welfare or correctional facility.[illegible]

Almost three-quarters of youth in custody in British Columbia have been in government care at some point in their lives. The fact that, in 2009, 53% of children in care in British Columbia were Aboriginal, leads to the conclusion that overrepresentation within the child welfare system may be one factor contributing to higher proportions of Aboriginal youth in custody.[illegible] Addressing this national crisis must be a priority if we are to keep Aboriginal young people out of the criminal justice system.

Legal scholar Larry Chartrand observed that it is hard to characterize the rates of Aboriginal youth involvement in the criminal justice system as anything other than discriminatory:

> When the impact of social factors results in greater involvement in the criminal justice system than would otherwise be the case, and the circumstances that gave rise to such social factors of poverty and social marginalization are attributed to the continuing effects of colonization, the result is systemic discrimination of Aboriginal youth in the criminal justice system.[illegible]

The Commission believes that there are ways to reduce the growing overrepresentation of Aboriginal youth in custody, but that they will primarily be found outside the justice system. A recent study examined crime rates throughout Canada and found that Québec had the lowest rates of crime, including violent crime. The author of the study examined a number of possible explanations. He dismissed socio-economic differences because Québec has lower average incomes than the Prairies, Ontario, or British Columbia, all of which have higher crime rates.[illegible] He related the findings to Québec's greater investment in social services, including economic supports for families, family housing, a considerable range of services against family violence, health and social services for families and children, parental educations and skills programs, child day care and parental leave systems, and related crime prevention programs.[illegible] Other provinces would do well to follow Québec's example.

Barriers to reducing the number of Aboriginal youth in custody

Bill C-10 (passed by Parliament in 2012) made changes to the *Youth Criminal Justice Act*. These changes are likely to undermine attempts within the youth justice system to accommodate Aboriginal justice practices and values. The bill changed some of the most basic principles that guide the way that the justice system deals with young people.

The YCJA begins with a section that outlines the basic goals and aspirations of the youth criminal justice system, which include dealing with young people in a way that promotes rehabilitation and reintegration. Prior to the enactment of Bill C-10, this section used to say that the goal was to "promote the long-term protection of the public" (emphasis added). It now says that the goal is to "protect the public." This change is significant. Canada has signalled that the long-term gains that come from investing in the rehabilitation of youth are not the priority. Instead, public protection in the here and now is the focus. It may seem a subtle difference, but the consequences may signal a shift of resources away from diversion and informal resolutions and towards custodial sentences.

Under Bill C-10, the *Youth Criminal Justice Act* has been amended to increase reliance on pretrial detention and custodial sentences, in part by broadening the definition of "serious offence" to include any indictable offence for which the maximum punishment is imprisonment for five years or more. This definition of "serious offence" now captures such crimes as theft over $5,000. The process of the Crown prosecutor to apply to have youth as young as fourteen sentenced as adults has been extended. Sentencing judges are now required to impose sentences that express "denunciation and deterrence" of youth crime.

Denunciation and deterrence have long been sentencing principles in the adult system. A denunciatory sentence reflects general societal disapproval of a given crime. Those convicted are meant to feel the sting of this disapproval with the severity of the sentence. Deterrence in a sentence speaks not just to the convicted, but to observers, again directing the judge to "send a message" with a severe sentence.

The introduction of deterrence in youth sentences is based on the same questionable premise that harsh sentences will be an example to offenders and other youth, thus deterring them from committing crimes. Denunciation and deterrence, however, can have a more punitive effect that can conflict with the goal of rehabilitation. Even in the adult context, there is little evidence that imposing harsh sentences has any impact in deterring crime. In criticizing the inclusion of these principles in the youth system, the Assembly of First Nations observed, "one can assume the denunciation and deterrence would be even less effective for young persons." What the change does accomplish is to send a message to sentencing judges that they are expected to impose longer youth sentences. There is a danger that these amendments will steer judges towards more punitive considerations and away from contextual factors such as residential schools, child welfare systems, and the crisis of overrepresentation of Aboriginal people in prisons.

The *Youth Criminal Justice Act* also protects the privacy of youth by banning the publication of names and identifying information. This is an important feature of the criminal justice system designed to ensure that youthful indiscretions do not permanently mar the lives and reputations of young people, including their opportunities

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Overrepresentation of Aboriginal people among victims of crime

[illegible]

Missing data

[illegible]

[illegible]

[illegible]

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[illegible]

female victims.[illegible] Aboriginal survivors of spousal violence were also more likely to report having been victimized multiple times in the past five years, with 59% reporting being victimized more than once as compared to 43% of non-Aboriginal victims.[illegible]

Tabitha Takawgak was married to a residential school Survivor. She recounted,

> I was married to him for 35 years. I couldn't take it anymore and I finally left him. I loved him and I wanted him as my husband for my lifetime. It's so hard to be married to a man who has been abused in this way. As the woman who spoke before me said, my dear children also suffered. I have many sons with my former husband and one has been in and out of jail and we lost our oldest to suicide. During those times that we were suffering I wanted to help my husband but I didn't know what to do. I loved my husband and yet he was my abuser … I don't want people to think badly of my husband. I still love him so much but I had to make a choice to no longer be his wife today.[illegible]

Residential schools deprived children of access to cultural and spiritual teachings and disrupted Aboriginal women's traditional roles as "mothers, grandmothers, caregivers, nurturers, teachers, and family decision-makers."[illegible] Discriminatory *Indian Act* provisions that had the effect of denying Aboriginal identity to women who married non-Aboriginal men, and their children, and this contributed to the separation of Aboriginal women from their communities.

Among the many tragic cases of violence perpetrated against Aboriginal women several have become particularly well known and serve as case studies.

Helen Betty Osborne

Early in the morning of November 13, 1971, Helen Betty Osborne, aged nineteen, was approached in The Pas, Manitoba, by four white men who wanted to pick up an Aboriginal woman for sex. She was abducted, sexually assaulted, and brutally murdered—stabbed fifty times with a screwdriver. Her skull, cheekbones, and palate were broken and her face was unrecognizable. She was left naked.

Betty Osborne attended Guy Hill residential school because there were no similar educational opportunities provided by the federal government in her home community of Norway House, a northern Cree community. In 1991 the Manitoba Aboriginal Justice Inquiry found that Betty Osborne was in The Pas because of government policy of "removing Aboriginal children from the influence of their parents and their cultures and to educate them to the 'white man's ways'" and found that "the actions of the government in doing so were clearly racist and discriminatory."[illegible]

It was not until sixteen years later that one of the murderers was convicted. The other three men went free. This was the conclusion of the Manitoba Aboriginal Justice Inquiry:

> Helen Betty Osborne would not have been killed if she had not been Aboriginal. The four men who took her to her death from the streets of The Pas that night had gone looking for an Aboriginal girl with whom to "party." They found Betty Osborne. When she refused to party she was driven out of town and murdered. Those who abducted her showed a total lack of regard for her person or her rights as an individual. Those who stood by while the physical assault took place, while sexual advances were made and while she was being beaten to death showed their own racism, sexism and indifference. Those who knew the story and remained silent must share their guilt.[127]

One of Helen Betty Osborne's friends spoke with the Commission about life today in Norway House:

> I'm glad you guys came .... There's so much drugs going on here; a lot of drinking; young kids. Not too long ago we had a murder too, a young girl got stabbed. I guess some guys went to her house, their house and beat up the dad and she jumped in to help her dad and she got stabbed and she got killed; about two weeks ago. She was only about 20 years old. I couldn't even bring myself to go to the wake, to the funeral, I just. I couldn't do it; I couldn't bring myself to come there. There's so much of that going on; holy it's bad. And I always think, "Yup, that's the schools, the residential schools" put a big hole in our lives.[128]

This statement reveals how the trauma of residential schools and disproportionate victimization by crime continue in Aboriginal communities like Norway House to this day.

Robert Pickton's victims

Another infamous case of violence against women that is connected with the legacy of residential schools is Robert Pickton's multiple murders of women from Vancouver's Downtown Eastside. Many of Pickton's victims were Aboriginal; some were residential school Survivors. One of the first victims who went missing in 1983 was Rebecca Guno, a member of the Nisga'a Nation, who attended residential school and had been working as a sex worker. A friend told the provincial Missing Women Commission about her last meeting with Guno:

> She introduced me to her son. During the course of our conversation she said "I'm a prostitute, Millie; I can't really explain why. But it's a living, we do what we have to do .... Life's not that bad. I have my baby and that's all that matters to me. His dad is really good to us, but I'm gonna keep doing what I do, his dad knows that and we are happy to be parents to our baby ... We're happy and that's what matters. I'm not ashamed of myself."[129]

Georgina Papin was from Hobbema, Alberta, and attended residential school. She was placed in foster care before she ran away at the age of twelve and began sex work in Las Vegas at the age of fourteen.[330] The police failed to investigate properly when Papin went missing. For example, they did not conduct interviews at native friendship centres she was known to attend.[331] Her remains were later found on the Pickton farm, and Robert Pickton was convicted of second-degree murder in her death.[332] Dawn Crey, another victim, was an intergenerational Survivor and was also placed in non -Aboriginal foster homes as a child.[333] When Crey was reported missing, the police apparently did nothing for six weeks and only interviewed one witness.[334]

Marlene Bird

On June 1, 2014, police in Prince Albert, Saskatchewan, found the body of Marlene Bird. She'd been sexually assaulted, beaten with a nail-studded board, and then set on fire. Although she survived, she would later lose both her legs, and surgeons would have to reattach half her face. "What did I do so wrong to have this happen to me?" Bird asked APTN News in Prince Albert. "I do try my best to be strong."[335]

Marlene Bird comes from the small northern Saskatchewan community of Molanosa. Talking of her childhood at home with alcoholic parents she said, "I remember playing with dolls, and they'd be inside drinking. When they started getting loud that's when I knew, dad bought something again ... so I started drinking that wine, me and my little brother."[336]

She was also in the residential school system. In a graphic novel of her story, she says that she was sexually abused in the school and again later as a young adult.[337] Her daughter was also abused but refused to speak about it to the police. Bird says she blamed herself and turned to alcohol, and that's when her own children were taken away.

Tina Fontaine

In early August 2014, fifteen-year-old Tina Fontaine, a girl from Sagkeeng First Nation, was reported missing in Winnipeg. A week later, two Winnipeg police officers stopped a car with Tina Fontaine in it. Even though she was fifteen and intoxicated, and was already listed as a missing person, they allowed the car to move on with her in it. Nine days later, her body was found wrapped in a bag in the Red River. Fontaine's great-aunt was told by the chief investigator that the officers had run her identity through the system and released her anyway. When it became known that the two officers had contact with Tina Fontaine prior to her murder, they were put on administrative leave. Several months later, the Winnipeg Police Service announced that although the officers were to be disciplined, no charges would be made against them for their conduct.[338] It is cases like this one that lead Aboriginal groups to question the willingness of the police to protect Aboriginal citizens. This lack of trust has some of its origins in the police's role in enforcing attendance at residential schools and in the less than robust performance of the police and courts in responding to wide spread violence against Aboriginal children in the residential schools.

Missing and murdered Aboriginal women and girls

Public awareness of the issue of violence against Aboriginal women has continued to grow through the efforts of advocates and through the work of high-profile investigations, inquiries, and reports.

Native Women's Association investigation

The Native Women's Association of Canada (NWAC), through its Sisters in Spirit project, has done groundbreaking work in discovering the truth about murdered and missing Aboriginal women and girls. This was a multi-year research, education, and policy initiative funded by Status of Women Canada, and was specifically designed to uncover the root causes, circumstances, and trends in violence against Aboriginal women in order to promote policy change to increase the personal safety and security of Aboriginal women and girls.

The Sisters in Spirit project found that, in most of the cases they identified, parents or grandparents of the missing or murdered women had attended residential school. Many grew up in families experiencing serious dysfunction, were forced into the child welfare system and adopted into non-Aboriginal families.[339] Without access to quality education and fewer employment opportunities, a high proportion of Aboriginal women and their children live in poverty and in situations of dangerous dependency and unsafe housing.[340] The devaluing of Aboriginal peoples symbolized by residential schools also contributes to the vulnerability of Aboriginal women. They are targeted for violence because they are Aboriginal, on the assumption that no one will miss them and police will not take the case seriously. Too often, this assumption proves to be true.

Sisters in Spirit also identified particular areas (and cities) in which Aboriginal women are at extremely high risk of violence, disappearance, and death. The cities include Regina, Saskatoon, Edmonton, Winnipeg, Vancouver, and communities in Northern British Columbia along Highway 16.[341] The 724 kilometres of Highway 16 that run between Prince Rupert and Prince George has been named the "Highway of Tears" because of the extraordinary number of young women who have gone missing along this stretch of road. Because of a lack of public transportation, those living in rural areas often have to resort to hitchhiking rides with strangers. Over a thirty-five-year period, some estimate that as many as forty women have been murdered or gone missing on that highway.[342] The majority of those victims were Aboriginal.[343]

In 2006, a Highway of Tears Symposium was organized by a number of affected First Nations and allied organizations. Among the recommendations that resulted from that symposium was a plan to prevent hitchhiking along Highway 16 through the establishment of a shuttle bus service. In 2012, that recommendation was adopted by the British Columbia Missing Women's Inquiry and by mayors in communities along the highway.[344] Yet, a month later, Greyhound Canada announced cuts on fifteen routes, including a 40% reduction in service along Highway 16.[345] Three years after the recommendation was accepted, it has not been implemented.

When the Sisters in Spirit project was completed, the Native Women's Association had identified 582 missing or murdered Aboriginal women and girls for the period between 1944 and 2010. Of those women, 67% were murder cases, 20% were missing persons, 4% were suspicious deaths, and 9% were simply unknown (i.e., it is unclear whether the victim was murdered, is missing, or died in suspicious circumstances).[346] Most of the cases in the database were from the previous ten years, occurring at a rate of about twenty cases per year, but the association believed that there were many unidentified older cases that were simply unrecorded and unknown.

The Sisters in Spirit final report indicated that 88% of the missing women had children or grandchildren, and it underlined the intergenerational effects of the loss of parents and parenting skills due to the residential schools experience and the Sixties Scoop (the wide-scale apprehension of Aboriginal children in the 1960s, 1970s, and 1980s). The report noted that only 13% of the women it had identified had been murdered on a reserve and only 7% had gone missing from a reserve.[347] Of the cases where location was known, 70% of the women and girls disappeared from an urban area and 60% were found murdered in an urban area. The study concluded that Aboriginal women were almost three times more likely to be murdered by a stranger than non-Aboriginal women.[348]

There were 149 cases identified where the activity of the missing women was known. About half of those women were involved in the sex trade, but the majority were not.[349] The study also found that only 53% of the cases involving homicide had resulted in a charge, a much lower rate than is typical in homicide cases.[350]

In 2010, the Government of Canada ceased funding the Sisters in Spirit project. While the Native Women's Association maintains the database as best it can, it does not have the resources that it once did.[351] The Government of Canada's refusal to continue to fund the project is part of a disturbing and recurring pattern of cuts to Aboriginal organizations that have been collecting information and knowledge about Aboriginal people. Other examples include the cuts to various Aboriginal health organizations, the long-form census, and other research conducted by Statistics Canada.

In March 2013, the Native Women's Association revised its record of cases of missing or murdered Aboriginal women and girls to 668.[352] That research was supplemented through the work of Maryanne Pearce, who completed a dissertation in 2013 at the University of Ottawa on missing and murdered women in Canada.[353] Also relying on publicly available information, Pearce's database includes 3,329 women (both Aboriginal and non-Aboriginal) who went missing or were murdered between 1946 and 2013. Ethnicity was known for only 1,595 of the women listed. Of these, 824 were identified as Aboriginal.[354]

House of Commons Standing Committee on the Status of Women

In 2010–11 the House of Commons Standing Committee on the Status of Women heard from 150 witnesses across the country about violence against Aboriginal women. The Committee also heard about a pattern of police failing to take reports of missing and murdered Aboriginal women and of serious delays in investigations. They were told that in domestic violence situations, police do not always respond in a timely manner, and that the police sometimes dismiss claims of sexual assault by Aboriginal women who they consider to be living a 'high-risk' lifestyle.

Aboriginal women are often treated as offenders, rather than Survivors or victims, making women less likely to contact police for help. Witnesses attributed this negligent approach to violence against Aboriginal women to racism and sexism by police officers, but also to the underresourced nature of policing on reserves and in more remote communities. As with many other areas of the lives of Aboriginal peoples, their access to police services can be undermined by overlapping and unclear jurisdictional lines. In some cases, it is unclear whether the RCMP, First Nations, municipal, or provincial police forces are responsible for the investigation.[355]

Oppal Inquiry

The Honourable Wally T. Oppal, formerly a justice of the British Columbia Court of Appeal, and later BC's attorney general, served as commissioner of the Missing Women Commission of Inquiry. In his report, released in 2012, Justice Oppal said he was

> particularly troubled by the failure of the police to employ an Aboriginal-specific investigation strategy given the disproportionate number of Aboriginal women among the missing women from the DTES [Downtown Eastside]. The First Nations Summit had brought their concerns about the large number of murdered Aboriginal women to the attention of the VPD, RCMP and PUHU [Vancouver Police Department, Royal Canadian Mounted Police, and Provincial Unsolved Homicides Unit] through its requests for action in February 1997. Independent Counsel for

> Aboriginal Interests repeatedly asked police witnesses about their consideration of tailored investigative strategies involving the Aboriginal community: the responses were woefully deficient … The police completely overlooked the Aboriginal dimensions of the missing women crisis throughout the investigations. This systemic blindness to distinctiveness and specificity of the Aboriginal communities is staggering in light of the number of Aboriginal victims.[306]

Justice Oppal also singled out the RCMP for criticism by noting,

> it is particularly difficult to comprehend the RCMP's failure to prioritize the missing and murdered women investigations. The fact that it did not do so is a blatant manifestation of systemic bias. Given its long history of involvement in the colonization process, including the forced recruitment and confinement of Aboriginal children in residential schools, the RCMP has a heightened duty to protect Aboriginal people. There is no evidence that the RCMP took active steps to meet this moral obligation.[307]

2014 RCMP Report

In May 2014, the RCMP released *Missing and Murdered Aboriginal Women: A National Operational Overview*. The document identified 1,181 cases of Aboriginal women and girls who were murdered or still considered missing. To be more specific, that's 1,017 Aboriginal women and girls who are known to have been killed since 1980, and 164 who are missing, and suspected to have been the victims of foul play. When these RCMP statistics are compared to those of non-Aboriginal women, it reveals that Aboriginal women are four times more likely to be victims of homicide. The report notes that "In 2011, there were 718,500 Aboriginal females in Canada, representing 4.3% of the overall female population that year."[308] The report goes on to point out,

> Between 1980 and 2012, there were 20,313 homicides across Canada, which averaged approximately 615 per year. Females represented 32% of homicide victims (6,551 victims) across all police jurisdictions between 1980 and 2012. Every province and territory was implicated. There were 1,017 Aboriginal female victims of homicide during this period, which represents roughly 16% of all female homicides—far greater than their representation in Canada's female population.[309]

In its review, the RCMP attempted to explain a history of confusion that had prevented the force from identifying Aboriginal victims of crime:

> The use of the term "Aboriginal" as a descriptor has different definitions in the different data sources that make up this research project. For example, CPIC (Canadian Police Information Centre) captures Aboriginal as an "ethnicity" whereas Statistics Canada's official position is that "Aboriginal" is not an ethnicity but rather

> an origin ... Differences in police practice between agencies make it hard to create a data set that is comparable across jurisdictions. For example, in collecting data on homicides, some agencies use official Aboriginal "status" as the means to determine identity, others use officer discretion (as discussed above), and others rely on self-identification by individuals or their associations (family, friend etc.) ... Historical police service (including the RCMP) adherence to jurisdictional and organizational policies has undermined the consistent collection and sharing of information on Aboriginal identity. This has meant a high number of Homicide Survey reports where the identity of the victim (and/or the accused) remained "unknown."[illegible]

Because of the ambiguities in identification and data collection, many believe that the number of murdered and missing women has been underestimated. Aboriginal scholar and activist Pamela Palmater wrote, "It is logical to conclude that the RCMP grossly under-counted the actual numbers of murdered and missing Aboriginal women in Canada. This conclusion is confirmed by the RCMP's own admission that due to these methodological problems 'a high number of Homicide survey reports where the identity of the victim (and/or accused) remained unknown.'"[illegible]

The release of the RCMP report has intensified public calls for a public inquiry into the issue. The federal government, however, has denied there is need for an inquiry and has suggested that the causes of violence against Aboriginal women are already known. Aboriginal Affairs Minister Bernard Valcourt has said that First Nations men have a "lack of respect" for women and girls on reserve. In a March 2015 speech he told Alberta chiefs that 70% of the cases of murdered and missing Aboriginal women were the result of the actions of Aboriginal men.[illegible] Information subsequently released by the RCMP was interpreted as supporting the minister's assertion.[illegible]

Many Canadians have rejected the contention that an inquiry is unnecessary because all the contributing factors are already known and understood. Pamela Palmater writes,

> This shell game of numbers and statistics is meant to blame the victim and deflect attention away from Canada's continued inaction to address this crisis which the United Nations has called a "grave violation" of our basic human rights. The crisis of murdered and missing Indigenous women and little girls continues while Canada (through Valcourt) blames the victim and the RCMP fail to live up to their duty to serve and protect everyone in Canada.[illegible]

International voices of concern

Although there are many voices calling for a national inquiry into the murdered and missing Aboriginal women and girls, the federal government has refused to establish one. That refusal has drawn international criticism. Respected international human rights organizations that often focus on disappearances in brutal dictatorships now conclude that it is necessary to examine Canada's problem of missing and murdered Aboriginal women.[illegible]

United Nations

United Nations human rights treaty monitoring bodies – including those committees addressing children's rights violations, torture, discrimination against women, and civil and political rights violations – have criticized Canada for the inadequate government response to violence against Aboriginal women and girls.[illegible] The UN Committee for the Elimination of Discrimination Against Women expressed concern that "hundreds of cases involving aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished."[illegible] The committee urged Canada to investigate the cases, to determine whether there is a racial pattern to the disappearances, and to take the necessary steps to remedy the deficiencies in the system.

The UN special rapporteur on the rights of Indigenous peoples remarked that a national inquiry "could help ensure a coordinated response and the opportunity for the loved ones of victims to be heard, and would demonstrate a responsiveness to the concerns raised by the families and communities affected by this epidemic. These and further steps are required to realize the promise of healing and a new relationship that was made in the 2008 apology."[illegible]

Amnesty International

Amnesty International points out that the scale of violence faced by Aboriginal women in Canada is a human rights violation. The organization says comprehensive national response is required that "addresses the social and economic factors that place Indigenous women at heightened risk of violence; ... the police response to violence against Indigenous women; the dramatic gap in standard of living and quality of life; ... continued disruption of Indigenous societies by the high proportion of children put into state care; and the disproportionate imprisonment of Indigenous women."[illegible]

Human Rights Watch

In response to the number of missing and murdered women along the Highway of Tears in Northern British Columbia, Human Rights Watch worked with the community to investigate. The organization conducted interviews with fifty Aboriginal women and girls, nineteen community service providers, and seven current and former RCMP officers.[illegible] The investigators found that "for many Indigenous women and girls interviewed for this report, abuses and other indignities visited on them by the police have come to define their relationship with law enforcement."[illegible]

Human Rights Watch was told stories of excessive use of force, racist and sexist verbal abuse, cross-gender searches, and sexual and physical abuse by police officers.

When police protection was sought in response to domestic violence, community service providers and Aboriginal women reported that police sometimes blamed the women for the abuse and shamed them for alcohol or substance use. Not surprisingly, Human Rights Watch found that "Indigenous women and girls report having little faith that police forces responsible for mistreatment and abuse can offer them protection when they face violence in the wider community."[113]

For all the reasons enumerated by these organizations and many others, the Commission believes that a comprehensive inquiry must be undertaken.

41) We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:
   - i. Investigation into missing and murdered Aboriginal women and girls.
   - ii. Links to the intergenerational legacy of residential schools.

In making this call to action, the Commission offers the following considerations:

1. A public inquiry will need to have two different components. It will need to be a fact-based inquiry as well as a policy inquiry, examining both individual cases as well as systemic issues.
2. In order for the inquiry to have sufficient credibility, a consultation advisory committee should be struck to make recommendations concerning its mandate. Such a committee should include professional advisors, Aboriginal women, and representatives of victims' families.
3. In examining individual cases, the inquiry must be cautious when dealing with open cases in which there may be a person of interest and where additional evidence is needed to lay a charge.
4. The inquiry should be allowed to look into the role of governments, the RCMP and other police services, and the child welfare system.
5. An inquiry should consider using witness panels with multiple witnesses as opposed to only single witnesses testifying, when considering systemic issues.
6. Commissions would not be able to name offenders, or identify criminal wrongdoing that has not already been found through an appropriate criminal process.
7. Anyone potentially affected by an inquiry must be protected from character and reputational harm, and has the right to attend and be heard.
8. An inquiry would provide an opportunity for personal, family, and

community healing. [illegible] suggests the process [illegible] with regard to the [illegible].

9. The need for handling of victims is [illegible] an important factor.
10. The inquiry should be mandated to study the role of police in the [illegible] of the cases.
11. The inquiry should gather and analyze data relating to:
    - where and when incidents occurred;
    - the specific circumstances of incidents;
    - consistencies, similarities, and differences between incidents;
    - how many victims were engaged in a [illegible], and
    - whether there has been a change in the number of incidents since 2000.
12. The inquiry should examine whether there is evidence of gang involvement (e.g., street gangs, motorcycle gangs, traffickers in the sex trade, with cross-national ties).
13. Is there evidence of serial killings?
14. What did police or others know, and when did they know it?
15. What is the degree of interagency and national coordination in [illegible] patterns?
16. Is violence against Aboriginal women and girls in Canada comparable to what is happening to Indigenous women in other countries (including the United States, Australia, New Zealand, and Mexico)?
17. Is there a [illegible] and [illegible] with [illegible]?
18. Since the termination of federal funding to the Native Women's Association of Canada's Sisters in Spirit project, how effective have federal initiatives to address Aboriginal female victimization been?
19. Is there evidence to support the contention that the government's [illegible] crime initiative is helping to reduce victimization?
20. What analysis did the federal government conduct prior to its decision to shut down further research by the Native Women's Association of Canada in 2010?
21. Has the number of missing and murdered Aboriginal women [illegible] increased since 2000?
22. Is it likely that the number of missing and murdered Aboriginal women will increase?

[illegible]

Supporting Aboriginal Victims of Crime

[illegible]

[illegible]

[illegible]

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

[illegible]

[illegible]

[illegible]

[illegible]

> [illegible]

> [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

- [illegible]

[illegible]

[illegible]

[illegible]

> [illegible]

> done things that I am deeply ashamed of. My greatest regret is hurting my three daughters; especially my eldest.[illegible]

Ron McHugh, an intergenerational Survivor told the Commission of the connection he saw between victimization and crime:

> It all stems from that one thing, that one policy, that one act—residential school. And so, today, I mean, you take a dysfunctional family of people. You know, a history of molestation over generations and generations—that's just one family. Now, you take a whole culture of people, and that kind of behaviour also goes from generation to generation.[illegible]

Many of the difficulties that both Aboriginal victims of crime and offenders suffer, including substance abuse and poverty, stem from the common legacy of residential schools. A related failure is the system's reluctance to appreciate that, in the Aboriginal context especially, it is often necessary to heal individuals by healing families and communities. Strategies must be directed towards community structures and dynamics as well as families. They must also recognize the tremendous diversity of cultures among Aboriginal peoples.

The way forward: Aboriginal justice systems

The Royal Commission on Aboriginal Peoples recommended that justice systems should be central in self-government for Aboriginal communities and that such systems respond to the legacy of colonialism and forced assimilation that distinguished the circumstances of Aboriginal people from other disadvantaged groups.[illegible]

Article 5 of the *United Nations Declaration on the Rights of Indigenous Peoples* recognizes the right to self-determining justice systems: "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."[illegible]

Manitoba's Aboriginal Justice Inquiry concluded,

> Wherever possible, Aboriginal justice systems look toward the development of culturally appropriate rules and processes which have as their aim the establishment of a less formalistic approach to courtroom procedures so that Aboriginal litigants are able to gain a degree of comfort from the proceedings while not compromising the rights of an accused charged with a criminal offence.[illegible]

The Manitoba Inquiry proposed that all people within the relevant territory be subject to Aboriginal justice systems and that Aboriginal communities be entitled to enact their own criminal, civil, and family laws and to have those laws enforced by their own justice systems. If they wish, they should also have the right to adopt any federal or provincial law and to apply or enforce that as well.

Aboriginal forms of justice will be as diverse as Canada's Aboriginal peoples. Typically, they would involve community-based justice processes, employing customary law, and focusing on restoring balance to communities. This vision of Aboriginal justice would, in a manner similar to American tribal courts, allow Aboriginal courts, in some cases, to have jurisdiction over criminal, family, and civil matters involving Aboriginal people that may arise, as they frequently will, in the cities.

Cautions

The Commission fully supports this vision but recognizes that there may be some risks in undertaking Aboriginal justice initiatives, especially in small communities that have suffered much intergenerational trauma. Aboriginal and restorative justice is slower than processing through the courts. Extra time and expense must be invested if a vulnerable victim is also included in the community justice process. Care must be taken to ensure proper supports and ceremony for both offenders and victims and their supporters.

Concerns have been raised about approaches that rely on often underfinanced and strained communities to correct offenders. If an Aboriginal offender lacks support in the community, he or she may be vulnerable to the exploitation of a power differential enjoyed by community factions who are hostile to the offender. In consensual decision-making processes such as sentencing circles, this can result in a chorus of disapproval voiced against an offender who demands especially harsh sanctions.

Joyce Dalmyn observes that such realities have tainted some sentencing circles:

> If the feather gets passed around and no-one makes any comment whatsoever, I have heard a judge state, right on the record, "Well it's clear that because nothing has been said, obviously they're not willing to say anything good about this person therefore I can only draw the conclusion that there's no sympathy for this person and I have to use the harshest penalties available to me."[386]

Ross Gordon Green is a provincial court judge in Yorkton, Saskatchewan, who has written about Aboriginal justice. He cautions, "A concern with these community sentencing and mediation approaches is that local involvement should not become a forum for the application of political pressure to the advantage of local elite and to the detriment of politically unpopular or marginalized offenders or victims."[387]

Judge Claude Fafard presided over Saskatchewan's first modern day sentencing circle. He expressed these reservations:

> I guess the greater thing is that it affects so many different people in that one community, that I'm almost afraid of some political influence. Because it touches on so many people, and I just sort of felt that maybe I should be there to ensure that politics doesn't get involved, that you don't have a powerful family dictating to a weaker family, that kind of thing.[388]

Some Aboriginal scholars have expressed concerns that Elders may be idealized as participants on whom communities will depend in pursuing their visions of justice.[389] There have been times, however, when individual Elders have fallen short of conducting themselves in accordance with expectations, and with serious repercussions for justice processes.

Bruce Miller relates that abuses of power plagued the South Island Justice Education Project on Vancouver Island. Elders, often from powerful families, would try to convince female victims to acquiesce to lighter sanctions for offenders under the project rather than the usual justice system. Their tactics included the offering of various persuasions in favour of dropping the allegations, the threat of witchcraft to inflict harm, or threatening to send the abuser to use physical intimidation. Some women felt that the problem was exacerbated by the fact that some of the Elders were themselves convicted sex offenders, which left them wondering how seriously their safety and concerns would be addressed. The project ended in 1993.[390]

David Milward is a law professor, specializing in Aboriginal justice issues, and a member of the Beardy's and Okemasis Nation in Saskatchewan. He suggests that the *Canadian Charter of Rights and Freedoms* has a role in ensuring the fairness of contemporary adaptations of Aboriginal justice. One of his proposals is for Aboriginal communities to administer their own community courts. These courts would have an important role in ensuring that participants in the process behave fairly towards each other, without intimidation or coercion. The customary law of Aboriginal communities would govern the disputes and the 'sentence' without reference to Canadian sentencing law. The community court judges would intervene only when one party has tried to exploit a power differential or coerce the other party. The community court judge could, for example, suspend matters indefinitely if the process is marginalizing an accused. If it is the victim who is being coerced or harassed, the community court judge could then impose a resolution that prioritizes the victim's safety, even over the objections of the other party. A community court judge thus becomes more of an arbitrator and mediator with some judicial powers.[391]

A prerequisite for change

Canada's legal system failed to prevent the abuses that took place in the residential schools and when it did, Survivors were often re-victimized by the adversarial and alienating nature of the justice system. Eventually, all the parties to the residential school litigation agreed that the Canadian legal system was not well-equipped to deal with the massive injustice of residential schools and designed an innovative settlement that allowed claims to be settled in a less adversarial forum. The settlement also recognized the need for collective reparations in the form of the Aboriginal Healing Foundation and this Commission. Given the failure of the Canadian legal system to stop or repair the genocidal injustice of residential schools, it is only reasonable to suggest that Aboriginal people be allowed to develop their own justice systems.

42) We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

Conclusion

The justice system needs to be reformed if the crisis of Aboriginal overrepresentation is not to become worse. Aboriginal people should not continue to be imprisoned and victimized because of the legacy of residential schools. That said, the Commission is convinced that overrepresentation in the justice system will not be reduced by justice system reform alone. It will be necessary to address all of the ongoing harms of residential schools—the harms to Aboriginal family, education, language and culture, and health. A key element of that change must be a justice system, based on Aboriginal law and healing practices and under Aboriginal control. Such a system will be essential in the movement to banish the legacy of residential schools and build a new future of Canadian reconciliation.

Calls to action

In order to redress the legacy of residential schools and advance the process of Canadian reconciliation, the Truth and Reconciliation Commission makes the following Calls to Action.

LEGACY

Child welfare

1) We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
    i. Monitoring and assessing neglect investigations.
    ii. Providing adequate resources to enable Aboriginal communities and child welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
    iii. Ensuring that social workers and others who conduct child welfare investigations are properly educated and trained about the history and impacts of residential schools.
    iv. Ensuring that social workers and others who conduct child welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
    v. Requiring that all child welfare decision makers consider the impact of the residential school experience on children and their caregivers.
2) We call upon the federal government, in collaboration with the provinces and territories, to prepare and publish annual reports on the number of Aboriginal children (First Nations, Inuit, and Métis) who are in care, compared with non-Aboriginal children,

as well as the reasons for apprehension, the total spending on preventive and care services by child welfare agencies, and the effectiveness of various interventions.

3) We call upon all levels of government to fully implement Jordan's Principle.

4) We call upon the federal government to enact Aboriginal child welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that:

   i. Affirm the right of Aboriginal governments to establish and maintain their own child welfare agencies.

   ii. Require all child welfare agencies and courts to take the residential school legacy into account in their decision making.

   iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.

5) We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families.

Education

6) We call upon the Government of Canada to repeal section 43 of the *Criminal Code of Canada*.

7) We call upon the federal government to develop with Aboriginal groups a joint strategy to eliminate educational and employment gaps between Aboriginal and non-Aboriginal Canadians.

8) We call upon the federal government to eliminate the discrepancy in federal education funding for First Nations children being educated on reserves and those First Nations children being educated off reserves.

9) We call upon the federal government to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.

10) We call on the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples. The new legislation would include a commitment to sufficient funding and would incorporate the following principles:

   i. Providing sufficient funding to close identified educational achievement gaps within one generation.

    ii. Improving education attainment levels and success rates.
    iii. Developing culturally appropriate curricula.
    iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.
    v. Enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems.
    vi. Enabling parents to fully participate in the education of their children.
    vii. Respecting and honouring Treaty relationships.

11) We call upon the federal government to provide adequate funding to end the backlog of First Nations students seeking a post-secondary education.

12) We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families.

Language and culture

13) We call upon the federal government to acknowledge that Aboriginal rights include Aboriginal language rights.

14) We call upon the federal government to enact an Aboriginal Languages Act that incorporates the following principles:

    i. Aboriginal languages are a fundamental and valued element of Canadian culture and society, and there is an urgency to preserve them.
    ii. Aboriginal language rights are reinforced by the Treaties.
    iii. The federal government has a responsibility to provide sufficient funds for Aboriginal-language revitalization and preservation.
    iv. The preservation, revitalization, and strengthening of Aboriginal languages and cultures are best managed by Aboriginal people and communities.
    v. Funding for Aboriginal language initiatives must reflect the diversity of Aboriginal languages.

15) We call upon the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner. The commissioner should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives.

16) We call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages.

17) We call upon all levels of government to enable residential school Survivors and their families to reclaim names changed by the residential school system by waiving administrative costs for a period of five years for the name-change process and the revision of official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers.

Health

18) We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.

19) We call upon the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes between Aboriginal and non-Aboriginal communities, and to publish annual progress reports and assess long-term trends. Such efforts would focus on indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

20) In order to address the jurisdictional disputes concerning Aboriginal people who do not reside on reserves, we call upon the federal government to recognize, respect, and address the distinct health needs of the Métis, Inuit, and off-reserve Aboriginal peoples.

21) We call upon the federal government to provide sustainable funding for existing and new Aboriginal healing centres to address the physical, mental, emotional, and spiritual harms caused by residential schools, and to ensure that the funding of healing centres in Nunavut and the Northwest Territories is a priority.

22) We call upon those who can effect change within the Canadian health-care system to recognize the value of Aboriginal healing practices and use them in the treatment of Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients.

23) We call upon all levels of government to:

   i. Increase the number of Aboriginal professionals working in the health-care field.

ii. Ensure the retention of Aboriginal health-care providers in Aboriginal communities.

iii. Provide cultural competency training for all health-care professionals.

24. We call upon medical and nursing schools in Canada to require all students to take a course dealing with Aboriginal health issues, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, and Indigenous teachings and practices. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Justice

25. We call upon the federal government to establish a written policy that reaffirms the independence of the Royal Canadian Mounted Police to investigate crimes in which the government has its own interest as a potential or real party in civil litigation.

26. We call upon the federal, provincial, and territorial governments to review and amend their respective statutes of limitations to ensure that they conform with the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people.

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

28. We call upon law schools in Canada to require all law students to take a course in Aboriginal people and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

29. We call upon the parties and, in particular, the federal government, to work collaboratively with plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.

30) We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

31) We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

32) We call upon the federal government to amend the *Criminal Code* to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

33) We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

34) We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD), including:

   i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.

   ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.

   iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.

   iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.

35) We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.

36) We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

37) We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.

38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

39. We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

40. We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.

41. We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:
    i. Investigation into missing and murdered Aboriginal women and girls.
    ii. Links to the intergenerational legacy of residential schools.

42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.

RECONCILIATION

Canadian Governments and the United Nations Declaration on the Rights of Indigenous People

43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.

Royal Proclamation and Covenant of Reconciliation

45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:
    i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius.
    ii. Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.
    iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
    iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.

46. We call upon the parties to the Indian Residential Schools Settlement Agreement to develop and sign a Covenant of Reconciliation that would identify principles for working collaboratively to advance reconciliation in Canadian society, and that would include, but not be limited to:
    i. Reaffirmation of the parties' commitment to reconciliation.
    ii. Repudiation of concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and terra nullius, and the reformation of laws, governance structures, and policies within their respective institutions that continue to rely on such concepts.
    iii. Full adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.
    iv. Support for the renewal or establishment of Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
    v. Enabling those excluded from the Settlement Agreement to sign onto the Covenant of Reconciliation.
    vi. Enabling additional parties to sign onto the Covenant of Reconciliation.

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resources required to conduct its work, including the endowment of a National Reconciliation Trust to advance the cause of reconciliation.

55) We call upon all levels of government to provide annual reports or any current data requested by the National Council for Reconciliation so that it can report on the progress towards reconciliation. The reports or data would include, but not be limited to:

   i. The number of Aboriginal children—including Métis and Inuit children—in care, compared with non-Aboriginal children, the reasons for apprehension, and the total spending on preventive and care services by child welfare agencies.

   ii. Comparative funding for the education of First Nations children on and off reserves.

   iii. The educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people.

   iv. Progress on closing the gaps between Aboriginal and non-Aboriginal communities in a number of health indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.

   v. Progress on eliminating the overrepresentation of Aboriginal children in youth custody over the next decade.

   vi. Progress on reducing the rate of criminal victimization of Aboriginal people, including data related to homicide and family violence victimization and other crimes.

   vii. Progress on reducing the overrepresentation of Aboriginal people in the justice and correctional systems.

56) We call upon the prime minister of Canada to formally respond to the report of the National Council for Reconciliation by issuing an annual "State of Aboriginal Peoples" report, which would outline the government's plans for advancing the cause of reconciliation.

Professional Development and Training for Public Servants

57) We call upon federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and

Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Church Apologies and Reconciliation

58) We call upon the Pope to issue an apology to Survivors, their families, and communities for the Roman Catholic Church's role in the spiritual, cultural, emotional, physical, and sexual abuse of First Nations, Inuit, and Métis children in Catholic-run residential schools. We call for that apology to be similar to the 2010 apology issued to Irish victims of abuse and to occur within one year of the issuing of this Report and to be delivered by the Pope in Canada.

59) We call upon church parties to the Settlement Agreement to develop ongoing education strategies to ensure that their respective congregations learn about their church's role in colonization, the history and legacy of residential schools, and why apologies to former residential school students, their families, and communities were necessary.

60) We call upon leaders of the church parties to the Settlement Agreement and all other faiths, in collaboration with Indigenous spiritual leaders, Survivors, schools of theology, seminaries, and other religious training centres, to develop and teach curriculum for all student clergy, and all clergy and staff who work in Aboriginal communities, on the need to respect Indigenous spirituality in its own right, the history and legacy of residential schools and the roles of the church parties in that system, the history and legacy of religious conflict in Aboriginal families and communities, and the responsibility that churches have to mitigate such conflicts and prevent spiritual violence.

61) We call upon church parties to the Settlement Agreement, in collaboration with Survivors and representatives of Aboriginal organizations, to establish permanent funding to Aboriginal people for:

   i. Community-controlled healing and reconciliation projects.
   ii. Community-controlled culture- and language-revitalization projects.
   iii. Community-controlled education and relationship-building projects.
   iv. Regional dialogues for Indigenous spiritual leaders and youth to discuss Indigenous spirituality, self-determination, and reconciliation.

Education for reconciliation

62) We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:

   i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.

   ii. Provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms.

   iii. Provide the necessary funding to Aboriginal schools to utilize Indigenous knowledge and teaching methods in classrooms.

   iv. Establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education.

63) We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including:

   i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.

   ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.

   iii. Building student capacity for intercultural understanding, empathy, and mutual respect.

   iv. Identifying teacher-training needs relating to the above.

64) We call upon all levels of government that provide public funds to denominational schools to require such schools to provide an education on comparative religious studies, which must include a segment on Aboriginal spiritual beliefs and practices developed in collaboration with Aboriginal Elders.

65) We call upon the federal government, through the Social Sciences and Humanities Research Council, and in collaboration with Aboriginal peoples, post-secondary institutions and educators, and the National Centre for Truth and Reconciliation and its partner institutions, to establish a national research program with multi-year funding to advance understanding of reconciliation.

Youth Programs

66) We call upon the federal government to establish multi-year funding for community-based youth organizations to deliver programs on reconciliation, and establish a national network to share information and best practices.

Museums and Archives

67) We call upon the federal government to provide funding to the Canadian Museums Association to undertake, in collaboration with Aboriginal peoples, a national review of museum policies and best practices to determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and to make recommendations.

68) We call upon the federal government, in collaboration with Aboriginal peoples, and the Canadian Museums Association to mark the 150th anniversary of Canadian Confederation in 2017 by establishing a dedicated national funding program for commemoration projects on the theme of reconciliation.

69) We call upon Library and Archives Canada to:

    i. Fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joinet-Orentlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.

    ii. Ensure that its record holdings related to residential schools are accessible to the public.

    iii. Commit more resources to its public education materials and programming on residential schools.

70) We call upon the federal government to provide funding to the Canadian Association of Archivists to undertake, in collaboration with Aboriginal peoples, a national review of archival policies and best practices to:

    i. Determine the level of compliance with the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joinet-Orentlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools.

ii. Produce a report with recommendations for full implementation of these international mechanisms as a reconciliation framework for Canadian archives.

Missing Children and Burial Information

71) We call upon all chief coroners and provincial vital statistics agencies that have not provided to the Truth and Reconciliation Commission of Canada their records on the deaths of Aboriginal children in the care of residential school authorities to make these documents available to the National Centre for Truth and Reconciliation.

72) We call upon the federal government to allocate sufficient resources to the National Centre for Truth and Reconciliation to allow it to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada.

73) We call upon the federal government to work with churches, Aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, where possible, plot maps showing the location of deceased residential school children.

74) We call upon the federal government to work with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location, and to respond to families' wishes for appropriate commemoration ceremonies and markers, and reburial in home communities where requested.

75) We call upon the federal government to work with provincial, territorial, and municipal governments, churches, Aboriginal communities, former residential school students, and current landowners to develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried. This is to include the provision of appropriate memorial ceremonies and commemorative markers to honour the deceased children.

76) We call upon the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries to adopt strategies in accordance with the following principles:

   i. The Aboriginal community most affected shall lead the development of such strategies.

   ii. Information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies.

iii. Aboriginal protocols shall be respected before any potentially invasive technical inspection and investigation of a cemetery site.

National Centre for Truth and Reconciliation

77) We call upon provincial, territorial, municipal, and community archives to work collaboratively with the National Centre for Truth and Reconciliation to identify and collect copies of all records relevant to the history and legacy of the residential school system, and to provide these to the National Centre for Truth and Reconciliation.

78) We call upon the Government of Canada to commit to making a funding contribution of $10 million over seven years to the National Centre for Truth and Reconciliation, plus an additional amount to assist communities to research and produce histories of their own residential school experience and their involvement in truth, healing, and reconciliation.

Commemoration

79) We call upon the federal government, in collaboration with Survivors, Aboriginal organizations, and the arts community, to develop a reconciliation framework for Canadian heritage and commemoration. This would include, but not be limited to:

  i. Amending the *Historic Sites and Monuments Act* to include First Nations, Inuit, and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat.

  ii. Revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values, and memory practices into Canada's national heritage and history.

  iii. Developing and implementing a national heritage plan and strategy for commemorating residential school sites, the history and legacy of residential schools, and the contributions of Aboriginal peoples to Canada's history.

80) We call upon the federal government, in collaboration with Aboriginal peoples, to establish, as a statutory holiday, a National Day for Truth and Reconciliation to honour Survivors, their families, and communities, and ensure that public commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process.

81) We call upon the federal government, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install

a publicly accessible, highly visible, Residential Schools National Monument in the city of Ottawa to honour Survivors and all the children who were lost to their families and communities.

82) We call upon provincial and territorial governments, in collaboration with Survivors and their organizations, and other parties to the Settlement Agreement, to commission and install a publicly accessible, highly visible, Residential Schools Monument in each capital city to honour Survivors and all the children who were lost to their families and communities.

83) We call upon the Canada Council for the Arts to establish, as a funding priority, a strategy for Indigenous and non-Indigenous artists to undertake collaborative projects and produce works that contribute to the reconciliation process.

Media and Reconciliation

84) We call upon the federal government to restore and increase funding to the CBC/Radio-Canada, to enable Canada's national public broadcaster to support reconciliation, and be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples, including, but not limited to:

    i. Increasing Aboriginal programming, including Aboriginal-language speakers.
    ii. Increasing equitable access for Aboriginal peoples to jobs, leadership positions, and professional development opportunities within the organization.
    iii. Continuing to provide dedicated news coverage and online public information resources on issues of concern to Aboriginal peoples and all Canadians, including the history and legacy of residential schools and the reconciliation process.

85) We call upon the Aboriginal Peoples Television Network, as an independent non-profit broadcaster with programming by, for, and about Aboriginal peoples, to support reconciliation, including but not limited to:

    i. Continuing to provide leadership in programming and organizational culture that reflects the diverse cultures, languages, and perspectives of Aboriginal peoples.
    ii. Continuing to develop media initiatives that inform and educate the Canadian public, and connect Aboriginal and non-Aboriginal Canadians.

86) We call upon Canadian journalism programs and media schools to require education for all students on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations.

Sports and Reconciliation

87) We call upon all levels of government, in collaboration with Aboriginal peoples, sports halls of fame, and other relevant organizations, to provide public education that tells the national story of Aboriginal athletes in history.

88) We call upon all levels of government to take action to ensure long-term Aboriginal athlete development and growth, and continued support for the North American Indigenous Games, including funding to host the games and for provincial and territorial team preparation and travel.

89) We call upon the federal government to amend the *Physical Activity and Sport Act* to support reconciliation by ensuring that policies to promote physical activity as a fundamental element of health and well-being, reduce barriers to sports participation, increase the pursuit of excellence in sport, and build capacity in the Canadian sport system, are inclusive of Aboriginal peoples.

90) We call upon the federal government to ensure that national sports policies, programs, and initiatives are inclusive of Aboriginal peoples, including, but not limited to, establishing:

   i. In collaboration with provincial and territorial governments, stable funding for, and access to, community sports programs that reflect the diverse cultures and traditional sporting activities of Aboriginal peoples.
   ii. An elite athlete development program for Aboriginal athletes.
   iii. Programs for coaches, trainers, and sports officials that are culturally relevant for Aboriginal peoples.
   iv. Anti-racism awareness and training programs.

91) We call upon the officials and host countries of international sporting events such as the Olympics, Pan Am, and Commonwealth Games to ensure that Indigenous peoples' territorial protocols are respected, and local Indigenous communities are engaged in all aspects of planning and participating in such events.

Business and Reconciliation

92) We call upon the corporate sector in Canada to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.

ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.

iii. Provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

Newcomers to Canada

93) We call upon the federal government, in collaboration with the national Aboriginal organizations, to revise the information kit for newcomers to Canada and its citizenship test to reflect a more inclusive history of the diverse Aboriginal peoples of Canada, including information about the Treaties and the history of residential schools.

94) We call upon the Government of Canada to replace the Oath of Citizenship with the following:

> *I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada including Treaties with Indigenous Peoples, and fulfill my duties as a Canadian citizen.*

Notes

Introduction

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55. Sinha and Kozlowski, "The Structure of Aboriginal Child Welfare in Canada," 9.
56. Sinha and Kozlowski, "The Structure of Aboriginal Child Welfare in Canada," 9.
57. Sinha and Kozlowski, "The Structure of Aboriginal Child Welfare in Canada," 11.
58. First Nations Child & Family Caring Society of Canada, *Wen:De: We Are Coming*, 89–90.
59. First Nations Child & Family Caring Society of Canada, *Wen:De: We Are Coming*, 17, 26.
60. Sinha and Kozlowski, "The Structure of Aboriginal Child Welfare in Canada," 12. As described above, Ontario operates under the "1965 Canada-Ontario Welfare Agreement." In addition, Aboriginal Affairs also provides over $10 million annually to Ontario for enhanced prevention services provided directly to First Nations and to child welfare agencies controlled by First Nations, as well as First Nations agencies that are developing but not yet mandated. Canada, Auditor General of Canada, "Chapter 4: First Nations and Family Services Program," 20.
61. Sinha and Kozlowski, "The Structure of Aboriginal Child Welfare in Canada," 12.
62. Canada, Indian and Northern Affairs Canada, Departmental Audit and Evaluation Branch, *Evaluation of the First Nations Child and Family Services Program*, 6.
63. UN General Assembly, *Convention on the Rights of the Child*, articles 3, 5, 18, 25, and 27(3). See also United Nations Committee on the Rights of the Child, *Commentary 11*, paras. 46–48.
64. Canada, Standing Committee on Public Accounts, 18 October 2011, Evidence of Michael Wernick (Deputy Minister, DIAND), 41st Parliament, 1st Session, no. 8, 12.
65. Government of Canada, *Government of Canada Response to the Report of the Standing Committee on Public Accounts, on Chapter 4.*
66. Canada, Auditor General of Canada, "Chapter 4: Programs for First Nations on Reserves," 28.
67. Sinha and Kozlowski, "The Structure of Aboriginal Child Welfare in Canada," 13.
68. Canada, Standing Committee on Aboriginal Affairs and Northern Development, 20 October 2009, Evidence of Mary Quinn (Director General, Social Policy and Programs Branch, Department of Indian Affairs and Northern Development), 40th Parliament, 2nd Session, 10–11; Canada, Standing Committee on Aboriginal Affairs and Northern Development, 15 February 2011, Evidence of Carolyn Loeppky (Assistant Deputy Minister, Child and Family Services, Government of Manitoba), 40th Parliament, 3rd Session, 1.
69. Canada, Standing Committee on Public Accounts, *Report of the Standing Committee on Public Accounts: Chapter 4: First Nations Child and Family Services Program*, 10.
70. Canada, Standing Committee on Public Accounts, *Report of the Standing Committee on Public Accounts: Chapter 4: First Nations Child and Family Services Program*, 10.
71. Canada, Standing Committee on Public Accounts, *Report of the Standing Committee on Public Accounts: Chapter 4: First Nations Child and Family Services Program*, 11.
72. Canada, Indian and Northern Affairs Canada, *Implementation Evaluation of the Enhanced Prevention Focused Approach in Alberta for the First Nations Child and Family Services Program*, 19–20.
73. Canada, Aboriginal Affairs and Northern Development Canada, *Final Report: Implementation Evaluation*, 23, 73.
74. Canada, Aboriginal Affairs and Northern Development Canada, *Final Report: Implementation Evaluation*, 20.
75. Canada, Auditor General of Canada, "Chapter 4: First Nations and Family Services Program," 2; British Columbia, Auditor General of British Columbia, *Management of Aboriginal Child Protection Services*, 5.

76. The First Nations Child & Family Caring Society of Canada is a non-profit organization that provides research, networking, public education, and engagement services for First Nations on children's rights issues.
77. Human Rights Commission Complaint Form, filed against Indian and Northern Affairs Canada by Regional Chief Lawrence Joseph and Cindy Blackstock.
78. Devlin, DeForrest, and Mason, "Jurisdictional Quagmire," 14.
79. *First Nations Child and Family Caring Society v. Canada*, 2011 CHRT 4 at para. 12.
80. *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445 (CanLII).
81. *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75.
82. *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75 at para. 22.
83. Cradock, "Extraordinary Costs and Jurisdictional Disputes," 179.
84. Canadian Paediatric Society, *Are We Doing Enough?*, 28.
85. Aboriginal Affairs and Northern Development Canada, "Jordan's Principle."
86. *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 (CanLII) at para. 82.
87. *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 (CanLII) at para. 82.
88. Canadian Paediatric Society, *Are We Doing Enough?*
89. *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 (CanLII).
90. *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342 at para. 106.
91. Canada, "First Nation Child and Family Services" (presentation), 2.
92. National Collaborating Centre for Aboriginal Health, *Child and Youth Health*, 3.
93. National Indian Child Welfare Association, "Indian Child Welfare Act of 1978."
94. BC Representative for Children and Youth, *When Talk Trumped Service*, 52.
95. First Nations Child & Family Caring Society of Canada, *Wen:De: We Are Coming to the Light of Day*, 38.
96. Canada, Public Health Agency of Canada, *Canadian Incidence Study of Reported Child Abuse and Neglect*, xiii, xxvii.
97. Canada, Public Health Agency of Canada, *Canadian Incidence Study of Reported Child Abuse and Neglect—2008: Major Findings*, 22.
98. Sinha et al., *Kiskisik Awasisak*, ix.
99. Sinha et al., *Kiskisik Awasisak*, x.
100. Sinha et al., *Kiskisik Awasisak*, 25.
101. Every region of the country was included amongst the sampled agencies, but the applicability of the findings in respect of Aboriginal child welfare is limited to the geographic jurisdiction of the sampled agencies. Sinha et al., *Kiskisik Awasisak*, xi, 25.
102. Sinha et al., *Kiskisik Awasisak*, xvi.
103. TRC, NRA, INAC File 6-21-1, volume 2, H. M. Jones to Deputy Minister, 13 December 1956. [NCA-000305-0001]
104. Canada, Statistics Canada, *Aboriginal Peoples in Canada*, 19.
105. Canada, Statistics Canada, *Aboriginal Peoples in Canada*, 19.
106. Sinha et al., *Kiskisik Awasisak*, 5.
107. UN General Assembly, *Convention on the Rights of the Child*, articles 3, 5, 18; United Nations Committee on the Rights of the Child, *Commentary 11*, para. 48.
108. UN General Assembly, *Convention on the Rights of the Child*, article 8.
109. UN General Assembly, *Convention on the Rights of the Child*, articles 3, 5, 18, 25, and 27(3). See also United Nations Committee on the Rights of the Child, *Commentary 11*, paras. 46–48.

110. UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, article 7(2).
111. UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, articles 11, 13, 14, 15, 16.
112. UN, Committee on Economic, Social and Cultural Rights, "Consideration of Reports," para. 24.
113. UN, Committee on Economic, Social and Cultural Rights, "Consideration of Reports," para. 56.
114. UN Committee on the Rights of the Child, "Concluding Observations," para. 55.
115. UN Committee on the Rights of the Child, "Concluding Observations," paras. 32–33.
116. UN Committee on the Rights of the Child, "Concluding Observations," para 55.
117. UN Committee on the Rights of the Child, "Concluding Observations," para. 33.d.
118. Saskatchewan Child Welfare Review, *For the Good of Our Children*, 18.
119. Sinha et al., *Kiskisik Awasisak*, 48.
120. First Nations Centre, *First Nations Regional Longitudinal Health Survey (RHS) 2002/03*, 135.
121. First Nations Centre, *First Nations Regional Longitudinal Health Survey (RHS) 2002/03*, 136.
122. From the Indian Residential Schools Adjudication Secretariat website (http://www.iap-pei.ca/us-nous/us-nous-eng.php):

    > The Independent Assessment Process (IAP) is part of the Indian Residential Schools Settlement Agreement—the largest class action settlement in Canadian history. The agreement aims to bring a fair and lasting resolution to the harm caused by residential schools. It involved representatives of Aboriginal groups, churches, the government of Canada, and the legal profession. It was approved by the courts. The IAP is for former students who have a claim of sexual or serious physical abuse. It provides them with a way to settle their claim more quickly, out of court. The process is designed to be claimant-centred, but fair and neutral. It is an adjudication process. The Adjudicator resolves claims and awards compensation.

    The deadline to submit an application under the Independent Assessment Process was September 19, 2012. Consult the Indian Residential Schools Adjudication Secretariat website, "Who We Are and What We Do" pages for more information.
123. Indian Residential Schools Adjudication Secretariat, "Observations on Residential School Experience," 7.
124. Indian Residential Schools Adjudication Secretariat, "Observations on Residential School Experience,"7.
125. Indian Residential Schools Adjudication Secretariat, "Observations on Residential School Experience," 8.
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127. Canada, Royal Commission on Aboriginal Peoples, *Report*, 3:17.
128. TRC, AVS, Alma Scott, Statement to the Truth and Reconciliation of Canada, Winnipeg, Manitoba, 17 June 2010, Statement Number: 02-MB-16JU10-016.
129. Sinha et al., *Kiskisik Awasisak*, xi. The authors concluded that there was not enough data on Metis and Inuit children and excluded them from the study. Sinha et al., *Kiskisik Awasisak*, ix.
130. Sinha et al., *Kiskisik Awasisak*, 83–87.
131. Sinha et al., *Kiskisik Awasisak*, xviii. The study elaborates,

    > The disparity in First Nations and non-Aboriginal substantiated investigation rates was smaller in the other maltreatment categories. In the population served by sampled

> agencies, the rate of substantiated emotional maltreatment investigations was 5.4 times greater for the First Nations population, the rate of substantiated exposure to intimate partner violence investigations involving First Nations children was 4.7 times greater than the rate for non-Aboriginal children, the rate of substantiated physical abuse investigations was 2.1 times greater for the First Nations population, and the rate of substantiated sexual abuse investigations was 2.7 times greater for the First Nations population served by sampled agencies than for the non-Aboriginal population. (Sinha et al., *Kiskisik Awasisak*, 85)

132. Sinha, Ellenbogen, and Trocmé, "Substantiating Neglect," 2083, 2088.
133. Sinha, Ellenbogen, and Trocmé, "Substantiating Neglect," 2089.
134. The authors concluded,

> We found that neglect was significantly more likely to be substantiated for First Nations children than for non-Aboriginal children, and that a statistically significant difference in the odds of substantiation persisted even after controlling for investigation, child, caregiver and household characteristics. Examination of interaction effects showed that that this disproportionality in neglect substantiation of neglect is also linked to differences in the weight that workers assign to mitigating factors. Worker confirmation of caregiver substance abuse was associated with a much greater increase in the odds of neglect substantiation for First Nations than for non-Aboriginal children. The presence of a lone caregiver increased the odds of neglect substantiation for First Nations, but not non-Aboriginal children. Finally, worker identification of housing problems significantly increased the odds of neglect substantiation for non-Aboriginal children; they did not do so for First Nations children. (Sinha, Ellenbogen, and Trocmé, "Substantiating Neglect," 2088)

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138. Ruiz-Casares, Trocmé, and Fallon, "Supervisory Neglect," 478.
139. Sinha et al., *Kiskisik Awasisak*, xii.
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141. Sinha et al., *Kiskisik Awasisak*, xiv.
142. Canada, Indian and Northern Affairs, *First Nation and Inuit Community Well-Being*, 22.
143. *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12, ss 34, 58.1; *Adoption Act*, RSBC 1996, c 5, ss 3, 17(1), 37; *Adoption Act*, CCSM c A2, ss 3, 19; *Family Services Act*, SNB 1980, c F-2.2, ss 1, 8, 71(1), 78(1); Adoption Act, SNL 1999, c A-2.1, ss 3, 13; *Children and Youth Care and Protection Act*, SNL 2010, c C-12.2, ss 9, 20–21; *Child and Family Services Act*, SNWT (Nu) 1997, c 13, ss 3, 27–28, 31, 38; *Children and Family Services Act*, SNS 1990, c 5, ss 2, 22, 30, 47, 78; *Consolidation of Child and Family Services Act*, SNWT (Nu) 1997, c 13, ss 3, 7, 27, 29.1, 38; *Child and Family Services Act*, RSO 1990, c C.11, ss 1(1), 49; *Child Protection Act*, RSPEI 1988, c C-5.1, ss 2, 9, 23, 38; *Youth Protection Act*, CQLR c P-34.1, ss 3, 91, 46–48.1, 62-64, 71–72.4; *Child and Family Services Act*, SS 1989–90, c C-7.2, ss 4, 11, 16-18, 37; *Child and Family Services Act*, SY 2008, c.1, ss 2, 38, 107(1).
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148. BC Ministry of Health, Office of the Provincial Health Officer, and Child and Youth Officer for British Columbia, *Health and Well-Being of Children in Care*, 54, 58.
149. Ontario, Office of the Chief Coroner of Ontario, *Paediatric Death Review Committee*, 34.
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154. Hughes, *The Legacy of Phoenix Sinclair*, 1:19–35.
155. Hughes, *The Legacy of Phoenix Sinclair*, 1:24.
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157. Hughes, *The Legacy of Phoenix Sinclair*, 1:28; 2:148.
158. Hughes, *The Legacy of Phoenix Sinclair*, 1:28.
159. Schibler and Newton, *Honouring Their Spirits*, 6, 23.
160. Schibler and Newton, *Honouring Their Spirits*, 30, 32.
161. Schibler and Newton, *Honouring Their Spirits*, 47–49.
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The failure to educate

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52. Leitch, "Canada's Native Languages," 107, 111.
53. *Mitchell v. M. N. R.*, 2001 SCC 33 at para. 10.
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55. *United States v. Winans*, 198 U.S. 371, 25 S.Ct. 662 (1905) at 381, states: "In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them a reservation of those not granted."
56. *Ford v. Quebec (Attorney General)*, [1988] 2 SCR 712.
57. *Canadian Charter of Rights and Freedoms*, s 22, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, http://publications.gc.ca/collections/Collection/CH37-4-3-2002E.pdf.

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62. In 1966, a R. C. Gagne challenged Jenness's stress on assimilation and argued that the language was connected with the preservation of culture and personality and that Aboriginal languages should be taught in the residential schools including by teachers in the community who would not necessarily have formal qualifications. See TRC, NRA, Library and Archives Canada – Ottawa RG85, Perm. volume 1916, file 108-4, part 8 – "Northern Conference, 1966 The Role of Eskimo culture/language/personality triplex in Northern Education," 29 March 1966. [RCN-006953]
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69. Assembly of First Nations, *Royal Commission on Aboriginal Peoples at 10 Years*, 18.
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81. Public Law 101-477, Oct. 30, 1990, 104 STAT 1153-1156.
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87. *Official Languages Act,* SNu 2008, c 10.
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89. *First Peoples' Heritage, Language and Culture Act,* RSBC 1996, c 147, s 6.
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A denial of justice

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Primary Sources

1. Truth and Reconciliation Commission Databases

The endnotes of this report often commence with the abbreviation TRC, followed by one of the following abbreviations: ASAGR, AVS, CAR, IRSSA, NRA, RBS, and LAC. The documents so cited are located in the Truth and Reconciliation Commission of Canada's database, housed at the National Centre for Truth and Reconciliation. At the end of each of these endnotes, in square brackets, is the document identification number for each of these documents. The following is a brief description of each database.

Active and Semi-Active Government Records (ASAGR) Database: The Active and Semi-Active Government Records database contains active and semi-active records collected from federal governmental departments that potentially intersected with the administration and management of the residential school system. Documents that were relevant to the history and/or legacy of the system were disclosed to the Truth and Reconciliation Commission of Canada (TRC) in keeping with the federal government's obligations in relation to the Indian Residential Schools Settlement Agreement (IRSSA). Some of the other federal government departments included, but were not limited to, the Department of Justice, Health Canada, the Royal Canadian Mounted Police, and National Defence. Aboriginal Affairs and Northern Development Canada undertook the responsibility of centrally collecting and producing the records from these other federal departments to the TRC.

Audio/Video Statement (AVS) Database: The Audio/Video Statement database contains video and audio statements provided to the TRC at community hearings and regional and national events held by the TRC, as well as at other special events attended by the TRC.

National Research and Analysis (NRA) Database: The National Research and Analysis database contains records collected by the National Research and Analysis Directorate, Aboriginal Affairs and Northern Development Canada, formerly Indian Residential Schools Resolution Canada (IRSRC). The records in the database were originally collected for the purpose of research into a variety of allegations, such as abuse in residential schools, and primarily resulted from court processes such as civil and criminal litigation, and later the Indian Residential Schools Settlement Agreement (IRSSA), as well as from out-of-court processes such as Alternative Dispute Resolution. A majority of the records were collected from Aboriginal Affairs and

Northern Development Canada. The collection also contains records from other federal departments and religious entities. In the case of some records in the database that were provided by outside entities, the information in the database is incomplete. In those instances, the endnotes in the report reads, "No document location, no document file source."

2. Indian Affairs Annual Reports, 1864–1997

Within this report, Annual Report of the Department of Indian Affairs denotes the published annual reports created by the Government of Canada, and relating to Indian Affairs over the period from 1864 to 1997.

The Department of Indian Affairs and Northern Development was created in 1966. In 2011, it was renamed Aboriginal Affairs and Northern Development. Before 1966, different departments were responsible for the portfolios of Indian Affairs and Northern Affairs. The departments responsible for Indian Affairs were (in chronological order):

- The Department of the Secretary of State of Canada (to 1869)
- The Department of the Secretary of State for the Provinces (1869–1873)
- The Department of the Interior (1873–1880)
- The Department of Indian Affairs (1880–1936)
- The Department of Mines and Resources (1936–1950)
- The Department of Citizenship and Immigration (1950–1965)
- The Department of Northern Affairs and National Resources (1966)
- The Department of Indian Affairs and Northern Development (1966–1997)

The exact titles of Indian Affairs annual reports changed over time, and were named for the department.

3. Library and Archives Canada

RG10 (Indian Affairs Records Group) The records of RG10 at Library and Archives Canada are currently part of the R216, Department of Indian Affairs and Northern Development fonds. For clarity and brevity, in endnotes throughout this report, records belonging to the RG10 record group have been identified simply with their RG10 information.

Where a copy of an RG10 document held in a TRC database was used, the TRC database holding that copy is clearly identified, along with the RG10 information connected with the original document.

4. Government Publications

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6. Theses and Dissertations

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